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JUN 8 1956
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. [redacted] 84

CENTRAL OF GEORGIA RAILWAY COMPANY
Petitioner

v.

BROTHERHOOD OF RAILROAD TRAINMEN, LOCAL LODGE NO. 721, ET AL.,

Respondents

BRIEF IN OPPOSITION TO PETITION OF CENTRAL OF GEORGIA RY. CO. FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

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A. THE QUESTION PRESENTED FOR REVIEW

It is necessary for the respondents to call attention to certain inaccuracies in the petition.

The question, correctly stated, *is* whether or not the Railway Labor Act has expressly or impliedly repealed the provisions of the Norris-LaGuardia Act denying jurisdiction to federal courts to enjoin strikes.

It is *not*, as petitioner would pose, "whether or not the Norris-LaGuardia Act deprives the United States District Court of jurisdiction to enjoin a strike threatened by the Brotherhood of Railroad Trainmen over a dispute pending the settlement of that very dispute by the National Railroad Adjustment Board, to which Board the dispute has been properly submitted for decision pursuant to the Railway Labor Act."

Our statement of the question is, except for the addition of the word "federal" and the omission of the words "or work stoppages," identical with the Court of Appeals' statement of it.[1]

Likewise, petitioner's recital of the manner in which such question was raised is incorrect. This is particularly so as to the claims of the National Railroad Adjustment Board's jurisdiction; the nature and purpose of the injunction, and the characterization of the dispute as being the same as that before such Board. Petitioner's recital was merely what the District Court found and concluded, and is merely adopted as petitioner's contentions in this application for certiorari.

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1. The Court of Appeals phrases the question as folows: "In short, all that is for decision on this appeal is whether the Railway Labor Act has expressly or impliedly repealed the provisions of the LaGuardia Act, denying jurisdiction to courts to enjoin strikes or work stoppages. Unless, therefore, it can be found that there has been such repeal, it is wholly necessary to determine whether, as appellee claims, the adjustment board has jurisdiction over the dispute or, as appellants claim, it does not have. Equally immaterial is the question whether the issue before the Adjustment Board is the same as that involved in the present case."

Federal Statutes Involved

The recital of the federal statutes involved requires addition. Besides Norris-LaGuardia Act Sections 1, 4(a), and 13, we would include 2 (referred to in the Code as 102)[2] as to its purpose.

B. STATEMENT OF THE CASE

Respondents cannot adopt petitioner's statement of the case set forth on pages 7-10 of the petition, because of its many inaccuracies, argumentative features and vital omissions. Respondents state the case as follows:

This is a railway labor case. The trial court enjoined a strike. The case was before the Court of Appeals because the trial judge (1) overruled a motion to dismiss, and (2) granted a preliminary injunction.

Both the complaint and injunction were directed against a strike on a railway carrier by certain of its employees represented by one of the national brotherhoods. The basic issue arose over a demand made under the Railway Labor Act for a change in a rate of pay and a rule relating to the coupling of air, signal and steam hose on the trains of the railroad involved. The carrier resisted the demand, claiming the present rate and rule were forever unchangeable since they were established by arbitration, the arbitration award being fre-

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2. The policy of the United States appears in Section 102 of the Norris-LaGuardia Act. The policy there set forth underlies and determines the interpretation of the act, and the limitations upon the jurisdiction and authority of the court. That section reads in part as follows: "Whereas . . . the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, . . . it is necessary that he have full freedom of association, self-organization and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual activities for the purpose of collective bargaining or other mutual aid or protections; therefore, the folowing definitions of and limitations upon the jurisdiction and authority of the courts of the United States are enacted."

quently referred to as the "Cheney Award." Thus the carrier sought to block the Brotherhood's demand for a new rule and a new rate of pay by making the incidental claim that the old rule had somehow become permanent.

Thus the dispute arose over the demand for a rule change. The demand was made by the craft representative. No grievances by individual employees had been asserted; but notwithstanding this, the carrier contends the question as to whether The Cheney Award is forever unchangeable is within the exclusive jurisdiction of the National Railroad Adjustment Board. Otherwise the meaning of that Award is not in issue. The Brotherhood proposed to support its demands by organized effort; and the District Court simply ordered no strike.

The litigation began when the Central of Georgia Railway Company filed a petition in the Superior Court of Chatham County, Georgia, against the Brotherhood and its allied defendants. That petition prayed for a declaration of the legal effects and rights under the "Cheney Award" in its favor, and for injunctive orders, temporary and permanent, against striking in support of the Brotherhood's demands for a new rule. The state court held against the railroad and in favor of the Brotherhood on the merits of the dispute. Both parties appealed to the state supreme court which held merely that the trial court had no jurisdiction of the issue.

Thereupon, the railroad filed in the United States District Court for the Southern District of Georgia a complaint again seeking injunctive aid to prevent a threatened strike because of attempts by the Brotherhood to re-negotiate for pay for coupling hoses. This complaint is voluminous and includes the Cheney Award, the state court petition, the opinion of the state supreme court and an ex parte submission which the carrier had filed with the National Railroad Adjustment Board purporting to ask for a ruling that the Cheney Award could never be altered.

To the federal court complaint the Brotherhood filed a motion to dismiss and an answer. The motion was predicated upon the following grounds:

1. The complaint failed to state a claim upon which relief could be granted.

2. The complaint showed upon its face that the court was without jurisdiction of the subject matter.

3. The court lacked jurisdiction because the complaint showed that the carrier had not exhausted its administrative remedies.

4. The complaint showed upon its face that the carrier was seeking an injunction under circumstances that are prohibited by the laws of the United States, to-wit, the Norris-LaGuardia Act (Title 29, Sections 101-115); and seeks no other relief.

The court overruled each and every ground of the motion to dismiss. Upon hearing the motion for injunction was granted, notwithstanding the fact that no evidence whatever was produced to show threatened or actual violence, no evidence of resort to police protection or any need therefor, and no evidence of inadequate police protection.

The injunction enjoined the Brotherhood defendants from "threatening to or from calling a strike," or other acts against the carrier and from "striking," and certain other acts, "in an effort to or designed or intended: (A) to compel * * * a cancellation, modification, change or revision of the 'Cheney Award'" * * * "or (B) to compel" the carrier "to make a rule or contract provision inconsistent with the Cheney Award" by further insistance upon the Brotherhoods's Section 6 notice for the change in rule so as to require payment for the hose coupling function, "or (C) to compel" the carrier to agree to a contract with the Brotherhood for extra compensation for such coupling.

Upon appeal, the Brotherhood urged four questions arising from the District Court's failure to dismiss the complaint and from the issuance of the injunction.[3] The Court of Ap-

3. The questions were:

"First

"Were all of the requirements of the Norris-LaGuardia Act met so as to authorize an injunction under the facts here involved?

"Second

"Did the railway Carrier first exhaust its administrative remedies available under the Railway Labor Act so as to authorize an injunction under the facts here involved?

peals, cutting straight to the heart of the case, ruled in favor of the respondents on the jurisdictional question. This ruling was upon the motion to dismiss where the jurisdictional question first arose. Without passing upon the other phases of the case, the Court of Appeals correctly ruled that in view of the Norris-LaGuardia Act, the trial court was without jurisdiction to grant an injunction against the strike, and ordered the case dismissed.

The case has recently been reported as 229 F. 2d 901.

Petitioner's statement of the case inaccurately states the Brotherhood's contention as to the effect of the Cheney Award. The Brotherhood's actual contention is that the expiration of the moratorium in the collective bargaining agreements made the hose coupling issue then ripe for negotiation.

Petitioner's statement in its reference to the Brotherhood's position in the State Court as to the jurisdiction of the Adjustment Board seeks to inject here an issue which is completely foreign. In both the District Court and the Court of Appeals the carrier had sought to inject this same feature and it was completely refuted factually and legally.

Petitioner's statement as to the character of the injunctive relief sought is a mere legal conclusion. Contrary to what is stated, it is *not* taken for granted "that the dispute is properly before the National Railroad Adjustment Board and within the Board's original jurisdiction," for the Court of Appeals *expressly* declined even to consider those questions. Statements that the dispute was "negotiated and mediated," if referring to what the carrier's complaint *alleged*, may be considered as correct; but if such statements refer to what the *evidence showed*, they are completely without foundation. For

"Third

"Is a demand for a change in rates of pay, rules, or working conditions, pursuant to the Railway Labor Act, Section 6, a justiciable issue and basis for an injunction under the facts here involved?

"Fourth

"Did the arbitration award in question conclude and thus prevent negotiation of the demand, given by the Brotherhood to the Carrier pursuant to the Railway Labor Act, for compensation for coupling so as to authorize an injunction under the facts here involved?"

actually, the carrier refused to negotiate whatever and filed the instant complaint in the United States Court the day before the mediator ended his efforts. Reference to the *State* court litigation is again inaccurate because (1) it omits to state that the State trial court held completely with the Brotherhood on the merits and it (2) fails to mention that the Georgia Supreme Court's holding as to Adjustment Board jurisdiction was based upon allegations in the carrier's petition which showed upon its face that such board had jurisdiction. Furthermore, the statement erroneously identifies the controversy before the Adjustment Board and the federal court as the same. Finally, the characterization of the carrier's federal court complaint, by the lengthy extract from the dissenting opinion in the Court of Appeals, to put it mildly, is certainly far from factual.

C. ARGUMENT

1. Preliminary

We do not believe that this is a case for certiorari. Petitioner has already been given a full and fair opportunity upon the appeal to justify the relief which it sought and obtained in the trial court. It could not do so. Truly it has been said that "The jurisdiction was not conferred upon this court merely to give the defeated party in the circuit of appeals another hearing."[4]

Petitioner seeks the writ of certiorari upon three of the grounds set forth in Rule 19. For the sake of clarity and brevity we will vary the petitioner's order in the treatment of these three points.

2. The Fifth Circuit Court of Appeals Decision

The Fifth Circuit decided, in short, that a strike cannot be enjoined, regardless of the provisions of the Railway Labor Act relating to the jurisdictions of the National Mediation Board or the Railroad Adjustment Board. The court stated that the only question involved was

> "whether the Railway Labor Act has expressly or impliedly repealed the provisions of the LaGuardia Act,

4. By Chief Justice Taft's opinion in *Mangum Import Co. v. Coty*, 262 U.S. 159, 67 L. ed. 531, 43 S.Ct. 587.

denying jurisdiction to courts to enjoin strikes or work stoppages." The very heart of the decision is embodied in the following holding:

"In this view it is not necessary for us to determine whether, as contended by appellees, the strike, if called, would be violative of the Railway Labor Act, upon the theory either that it would violate the contract providing for the Cheney Award, or that it would violate the spirit and purpose of the Labor Act to conduct a strike while the issue which brought it about was pending before the Adjustment Board with jurisdiction to decide it. This is so because the fundamental weakness of appellee's position is that *there is no express provision in the Labor Act in any way limiting the scope and operation of the prohibitions of the LaGuardia Act, and the claim of implied repeal because of a necessary conflict between the two acts is not borne out by a consideration of the language of the two acts either apart from, or in connection with their legislative history.*" (Emphasis supplied.)

The opinion of the Court of Appeals was written by Chief Judge Hutcheson. At the outset it approvingly quoted from the case of *Carter v. Herrin Motor Freight Lines*, 131 F. 2d 557, including the language that "all of the acts expressly enumerated in Section 104" (of the Norris-LaGuardia Act), "were no longer to be the subject of injunctive action . . ." Accordingly, it held as "wholly untenable," in view of numerous cases, the contention that the injunction sought to prevent "a breach of contract embodied in the Cheney Award." Likewise, it held that the "claim that the purpose of the strike and its effect would do violence to statutory procedures embodied in the statute having disposition of controversy by the Railroad Adjustment Board was equally unsound." It called attention to decisions of that and this court holding that to contend that the purpose of a strike may be illegal "was an attempt to enlarge the jurisdiction of the Federal Court jurisdiction as limited by" the Norris-LaGuardia Act.

The court of appeals opinion recites some of the purposes of the Railway Labor Act and observes that

"*none* of the sections manditorily provides that disputes *must* be submitted to the Board rather than being handled

by the voluntary methods provided for in the same act." (Emphasis supplied.)

Further it said that if Congress, immediately after passing the Norris-LaGuardia Act, had

> "intended to curtail its provisions, limiting the equity jurisdiction of the courts in labor disputes so as to subject strike action to injunction, it is inconceivable, we think, that it would not have expressly so provided."

Right there it called attention to this court's decision in *General Committee of Adjustment v. Missouri-Kansas Ry. Co.*, 320 U.S. 323, and to the burden which it casts upon one seeking to justify the judicial remedy sought here.

The Court of Appeals ruled against petitioner's charges of unlawful acts being threatened, or inadequate police protection, as wholly unsupported in the evidence. It held it unnecessary to rule upon the jurisdiction of the administrative agencies under the Railway Labor Act, or to pass upon several other claims which had been made by the parties. It concluded by stating that the pendente lite character of the injunctive relief sought "to maintain the status quo pending the decision of the question by the Adjustment Board," was immaterial, because a labor dispute was involved and an injunction was sought.

We submit that the opinion of the Court of Appeals demonstrates a strong grasp of the entire case, a correct understanding of the law involved, and sets forth a clear, direct and decisive adjudication of the issues. We believe that decision was correct and will stand as a firm precedent.

3. The Question Decided is Not in Conflict With Applicable Decisions of this Court

Petitioner contends that the decision of the Court of Appeals "is in conflict with *analogous and thus* applicable decisions" of this court. (Emphasis supplied.)

This contention, we submit, does not conform to Rule 19 which provides for certiorari

"(b) where a court of appeals has * * * decided a federal question in a way in conflict with applicable decisions of this court."

Thus the only conflict which petitioner could find was remote, indirect and of no significance.

Petitioner relies upon certain authorities in the dissenting opinion. Yet, not a single one shows any such conflict. Those are decisions relied upon as supportive of its position that a federal court may grant an injunction against a strike, even in the face of the Norris-LaGuardia Act. But of paramount significance here is that *none* of those cases *involved* an *injunction against any act* which is *insulated from injunction* by the Norris-LaGuardia Act.[5] Specifically, none even involved a strike.

The cases cited in the dissenting opinion will be individually referred to hereinafter. They furnish scant if any support for petitioner's contentions. Moreover the dissenting opinion fails to heed two very important cases.

With respect to the case of *Milk Wagon Drivers Union v. Lake Valley Farm Products*, 311 U.S. 91, L. ed. 63, 61 S.Ct. 112, the court of appeals said:

"For, as has been held time and again, the purpose of the strike, whether it is or is not legal, is not a limitation upon the prohibitions of the statute. *Cf. Wilson & Co. v. Birl*, 105 F. 2d 948, and *East Texas Motor Freight Lines v. Teamsters*, 163 F. 2d 10, where this court held that such a contention was an attempt to enlarge Federal Court jurisdiction as limited by the Act. *Cf. Milk Wagon Drivers Union v. Lake Valley Farm Products*, 311 U.S. 91, and 43 C. J. S. 748 and 29 A. L. R. (2) 360."

The *Milk Wagon Drivers Union* case also deals with the jurisdictional feature due to the Norris-LaGuardia Act. It

5. Section 104 of that Act provides as follows:

"No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts: (a) Ceasing or refusing to perform any work or to remain in any relation of employment;" (then follows other acts not involved here but likewise exempted from injunction).

is strikingly similar to the one at bar. There, a controversy arose between the Union and the employer over the "vendor system" of delivery which the employer had established. To combat it, the employees began to picket the stores employing it. Thereupon, the employer sought in the United States District Court an injunction. The trial court denied it, but the Circuit Court of Appeals reversed.

Upon reaching here, this court unanimously held that:

> "The jurisdictional prerequisites to the granting of an injunction in a labor dispute, prescribed by the Norris-LaGuardia Act (47 Stat. at L. 70, chap. 90, 29 USC, Secs. 101-115), must be satisfied before injunctive process can be issued against a labor union charged with violating the Sherman Anti-trust Act."

In the opinion this apt language applies with equal force here:

> "For us to hold in the face of this legislation, that the Federal Courts have jurisdiction to grant injunctions in cases growing out of labor disputes, merely because alleged violations of the Sherman Act are involved, would run counter to the plain mandate of the Act and would reverse the declared purpose of Congress."

The dissenting opinion in the court of appeals in the instant case completely overlooks and does not even cite the case of *General Committee of Adjustment v. Missouri-Kansas-Texas Ry. Co.*, 320 U.S. 323, 88 L. ed. 76, 64 S.Ct. 1282. This case points out not only that the strike weapon is preserved, but also that, Congress having failed to provide for court injunctions, none was intended. The Court said:

> "In short, Congress by this legislation has freely employed the traditional instruments of mediation, conciliation and arbitration. Those instruments, *in addition to the available economic weapons,* remain unchanged in large areas of this railway labor field." P. 332 (underscoring supplied).

Further, the court said:

> "All else is left to those voluntary processes whose use Congress has long encouraged to protect those ar-

teries of interstate commerce from industrial strife. The concept of mediation is the antithesis of justiciability.

"In view of the pattern of this legislation and its history the command of the Act should be explicit and the purpose to afford a judicial remedy plain before an obligation enforceable in the courts should be implied." (p. 337.)

The weight of those two cases inclines the scales decidedly in favor of the conclusion which the court reached. They resound harmoniously with that result. The contrary view, as expressed in the dissenting opinion and urged here by petitioner, is in discord with such cases and others of this court.

4. There is no Conflict Between the Fifth and Seventh Circuits Warranting Certiorari in This Case

It is true that the Seventh Circuit in the case of *Chicago River and Indiana Railroad et. al v. Brotherhood of Railroad Trainmen* did not feel restrained in its issuance of an injunctive order, by the Norris-LaGuardia Act, while the Fifth Circuit in the instant case felt otherwise. Nevertheless the two courts were dealing with different problems. In the *Chicago River and Indiana* case only grievances were involved; whereas in the instant case a Section 6 notice for a new rule was the cause of the carrier's seeking an injunction. The *Chicago River and Indiana* case involved twenty-one "grievances." *Elgin v. Burley*, 325 U.S. 711, 89 L. ed. 1886, 65 S.Ct. 1282, classifies disputes of this character as "minor." It differentiates them from disputes involving the making of collective agreements and characterizes these disputes as "major" disputes. It is clear that the Railway Labor Act authorizes submission of such minor disputes to the Railroad Adjustment Board; and it vests the National Mediation Board with jurisdiction of "major disputes."

It is thus clear that the decision of the Seventh Circuit actually turned upon the handling of grievances whereas the Fifth Circuit case was one dealing with the rule making function of collective bargaining representatives. *Elgin v. Burley* undertakes to demonstrate the intention of Congress to provide separate treatment for the two different types of disputes. The Seventh Circuit said:

"Insofar as the Railway Labor Act, as we now interpret it, authorizes the issuance of injunctions to prevent strikes over *minor disputes*, it operates to repeal the provisions of the Norris-LaGuardia Act, to the extent that the wording thereof might otherwise be said to apply to such railway labor disputes. It follows that, in the case at bar, the district court has jurisdiction to entertain plaintiff's prayer for injunctive relief." (Emphasis supplied.)

While we are convinced that the Seventh Circuit decision is erroneous, we submit that it does not present such a conflict with the instant case as to warrant granting the writ of certiorari in the instant case. What Congress intended with reference to minor disputes is quite a different thing from its intention with respect to major disputes.[6]

5. The Question Presented is Not of Sufficient Importance As To Warrant the Writ of Certiorari

The remaining ground for this petition for certiorari claimed by petitioner is that the court of appeals "has decided an important question of Federal law which has not been, but should be, settled by this court."

After the Norris-LaGuardia Act was enacted in 1932 and the Railway Labor Act was amended in 1934 — twenty-odd years passed before the question sought to be presented to this court apparently was even raised before a trial court. Yet,

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6. "What constitutes a 'conflict'? . . . The concept is not an exact one. One point may be stressed: the Court is interested in conflicts which impair uniformity of decision where uniformity is significant, conflicts which its decision in the particular case will remove. This rules out, of course, hosts of particularistic applications of general rules turning upon the analysis of special states of fact." ("The Business of the Supreme Court at October Term, 1933," Frankfurter and Hart, 48 Harv. L. Review, Rev. 238, 268.)

there have been many strikes, unrestrained by injunctions, during that long period of time. Logically, we may assume that before 1955, few seriously entertained the view that an injunction could be had in the federal court against a strike. In the opinion of the court below, prepared by its able spokesman, appear words which speak our thoughts better than we can. Referring to the Norris-LaGuardia Act, the court said:

> "The language of the act is too plain and the decisions construing it too clear cut and positive to admit of any doubt that the purpose and effect of the act, as a whole, was to give expression to, and make effective, the policy which breathes throughout it. This policy is that labor disputes, as such, with the assembling, the picketing, the persuasion, the stopping of work, the enlisting of sympathy and support, and all the other acts expressly enumerated in Section 104, were no longer to be the subject of injunctive action but were, and were expressly recognized to be, legitimate means of advancing the interests of the working man, and, therefore, of the people as a whole. In the light of that policy, which can be made fully effective only when there is a recognition on the part of employer and employee alike, that labor disputes as such are not at all reprobated, but encouraged, and only violence in connection with them is forbidden . . ."

The reference by this court in the *General Committee of Adjustment* case, supra to "economic weapons" in reviewing the present Railway Labor Act, shows that strikes are contemplated, sought to be avoided, but are lawful. The author of the *Elgin* opinions when speaking for the Court of Appeals for the District of Columbia, said "the Railway Labor Act was designed, not to outlaw the right to strike, but merely to prevent the necessity for its exercise."[7] Had Congress intended to outlaw strikes, it would have done so expressly in that Act. The Act does not deal with injunctions at all.

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7. *Washington Terminal Co. v. Boswell*, 124 F.2d 235, 247 (Aff. 319 U.S. 732, 87 L. ed. 1694, 63 S.Ct. 1430).

6. Petitioner's Cases

The petitioner relies upon the following cases:

1. *Virginian Ry Co. v. System Federation* No. 40, 300 U.S. 515, 81 L. ed. 789, 57 S.Ct. 592, involves an injunction sought by employees against a railway carrier to recognize and treat with their union, the only authorized bargaining representative, as is required by Section 2 of the Railway Labor Act. But, there it was the *carrier* who sought the *protection of the* Norris-LaGuardia Act, seeking to rely upon its Section 9 (109), which deals with the *scope* of injunctions. No *strike*, or any other act enumerated in Section 4 (104), *was even involved* in that case. The court merely held that the Norris-LaGuardia Act was not passed to shield the actions of a carrier which had violated the Railway Labor Act. Obviously, a railroad's duty to treat with an employees' bargaining representative (Railway Labor Act's Section 2), is not one of those acts exempt from injunction by the Norris-LaGuardia Act's Section 4 (104).

2. *Graham v. Brotherhood of Locomotive Firemen and Enginemen*, 338 U.S. 232, 94 L. ed. 22, 70 S.Ct. 14, dealt with an injunction issued in favor of *employees* against certain railroads and a union restraining compliance with a collective labor agreement which discriminated against colored firemen. Like the *Virginian Ry.* case, supra, no strike or any other act exempted by Section 4 (104) of the Norris LaGuardia Act was involved. So, this court held that

> "the Norris-LaGuardia Act (29 U.S.C. Secs. 101 et seq.) did not deprive Federal courts of jurisdiction to compel compliance with positive mandates of the Railway Labor Act (45 U.S.C. Secs. 151 et seq.) enacted for the benefit and protection, within a particular field, of the same groups whose rights are preserved by the Norris-LaGuardia Act" (headnote 4).

While the Court held that the controversy there was a labor dispute, nevertheless it further said that the Railway Labor Act imposed upon the bargaining representative the duty to represent all without hostile discrimination. Accordingly, it said that the Norris-LaGuardia Act did not "contain anything to suggest that it would deprive these Negro firemen

of recourse to equitable relief from illegal discriminatory representation by which there would be taken from them their seniority and ultimately their jobs." No strike, or any other act enumerated and protected against injunction by Section 4 (104) of the Norris-LaGuardia Act was even involved there. Petitioner quotes extensively from the *Graham* opinion; but nothing in the quotations is supportive of the carrier's position that a strike may be enjoined as prayed here.

3. *Texas and New Orleans Railroad Company v. Brotherhood of Railway and Steamship Clerks*, 281 U.S. 548, 74 L. ed. 1034, 50 S.Ct. 427, involved an injunction by employees against a railway carrier to restrain the company's influence and coercion of them with reference to their organization and designation of their collective bargaining representative under the Railway Labor Act as it existed before the 1934 amendment. Such created a duty, which was judicially enforceable. Again no strike, or any other act protected against injunction by Section 4 (104) of the Norris-LaGuardia Act, was involved.

4. *Brotherhood of Railroad Trainmen v. Howard*, 343 U. S. 768, 96 L ed 1293, 72 S.Ct. 1022, was another Negro discrimination decision in which, like *Graham*, supra, certain railway employees obtained an injunction against enforcement of a racially discriminatory agreement made by their carrier and bargaining representative, this court holding that such an agreement was void and unenforceable. In so deciding it held that the trial court had jurisdiction, regardless of the Norris-LaGuardia Act, citing the other racial discrimination cases of *Steele* (323 U. S. 192, 89 L. ed. 173, 65 S.Ct. 226), *and Graham, supra*.[8] Nothing in the *Howard* case is supportive of petitioner's contention. Here again, in the *Howard* case, there was no strike or any other of the acts specified in Section 4 (104) of the Norris-LaGuardia Act.

None of the *Virginia Ry Co., Graham, Texas and N. O. Ry. Co., Howard* cases involved either a (1) strike, or (2) any other activity insulated by Section 4 (104) of the Norris-LaGuardia Act, or (3) the Adjustment Board. On the contrary, *all* involved injunctions granted (1) at the instance of

8. Petitioner's quotation on page 21 of its brief taken from the *Howard* case is unintentionally misleading, in that the parenthetical phrase "to enforce the Railway Labor Act" does not appear in the text. Nor has it been indicated that this phrase was supplied by the briefer.

employees against their railway carrier *employer* and (2) for protection of their rights as contemplated by the *Norris-LaGuardia Act*. The statement is made on page 22, paragraph 1, of petitioner's brief that the enforceable obligations in *those cases* make it "equally clear" that this court "has held that where one party has submitted a controversy to the National Railroad Adjustment Board, it is the obligation of the other party to await the outcome of that decision." None of these cases supports petitioner's conclusion.

5. *Order of Railway Conductors v. Pitney*, 326 U.S. 561, 90 L. ed. 318, 66 S.Ct. 322, is next cited. There the Court *denied* an injunction. Furthermore, the case did not involve either (1) a strike, or (2) any other activity embraced in Section 104 of the Norris-LaGuardia Act. Actually, it involved a dispute primarily *between two railway brotherhoods*, each claiming that its respective contract with the railway carrier entitled it to the work in question. The carrier was in reorganization, and filed in the *federal* court an *equitable* proceeding in the nature of a petition to instruct its trustee and for injunction. This case involved an interpretation of the labor contracts of two competing unions. The court held that until those contracts had been construed by the National Railroad Adjustment Board, one could not tell whether the conductors were entitled to the work which they were asking to have enjoined from going to the competing union. We submit it is fallacious to argue that the denial of an injunction is proof of the court's power to grant one. The court stayed dismissal of the action as it involved a question of instructions to the court's trustee. The petitioner's argument that the court's purpose in granting the stay was to maintain the status quo is wholly misleading and incorrect.

6. *Elgin, Joliet and Erie Ry. Co. v. Burley*, 325 U.S. 711, 89 L. ed. 1886, 65 S.Ct. 1282, is important because it differentiates between "grievances" and "major disputes" insofar as their administrative handling is concerned. It does not involve either (1) an injunction, or (2) a strike or any other of the acts insulated by Section 104 of the Norris-LaGuardia Act. Like *Pitney*, it does not even mention that act. At the outset it referred to certain language in the *Moore* case (*Moore v. Illinois Central Ry. Co.*, 312 U.S. 630, 85 L. ed. 1089, 61 S.Ct. 754), to-wit, that the machinery provided for

settling disputes was not "based on a philosophy of legal compulsion" but created "a system for peaceful adjustment and mediation voluntary in its nature," and its holding that resort to Adjustment Board may not be necessary in a case involving unlawful discharge. The court points out that another of the Railway Labor Act's "primary commands, judicially enforceable" is the duty to negotiate. But, nowhere in the *Burley* decisions can be found any support that a United States District Court may enjoin a strike, as contended here.

7. *Slocum v. Del., Lakawanna & Western Railroad Co.*, 399 U.S. 239, 94 L. ed. 795, 70 S.Ct. 577, is similar to the *Pitney* case, applying its doctrine to state courts. No injunction or other equitable relief was sought in the *Slocum* case. There was no strike. The Norris-LaGuardia Act was not even mentioned. What the court said about the exclusiveness of the jurisdiction of the National Railroad Adjustment Board in interpreting agreements related solely to grievances and minor disputes. It had nothing whatever to do with strikes and major disputes.

8. *Order of Railway Conductors of America v. Southern Railway Company*, 339 U.S. 255, 94 L. ed. 811, 70 S.Ct. 585, was like the *Slocum* case in that the carrier had filed in the State court its petition for declaratory judgment to interpret a collective bargaining agreement. This court ,at the outset, remarked that the case presented "the same statutory question as" the *Slocum* case, and held that "for reasons set out in the *Slocum* case . . ." the South Carolina State Court was without power to interpret the terms of this agreement and to adjudicate the dispute. Certainly, nothing in that case is supportive of petitioner's position for an injunction against a strike.

In the *Pitney, Slocum* and *Southern Ry.* cases the doctrine of exclusive administrative jurisdiction constituted a valid defense against the carriers' efforts to obtain judicial relief. In the case at bar the carrier seeks to invoke that doctrine, as supportive of an injunction in its behalf. In fact, in the three cases mentioned no such use was made of the doctrine. In *Pitney* an injunction was *denied* because of the doctrine. It is apparent that the cases cited do not in any way justify the use which petitioner is attempting to make of that doctrine.

9. The last decision of this court relied upon by the petitioner is *Cook County National Bank v. United States*, 107 U. S. 445, 27 L. ed. 537, 2 S.Ct. 561. Petitioner on page 27 of its brief quotes a short extract from this case. The quotation is a statement, in very general terms, which the court used to express the repeal or supersession of the insolvency act of 1797 by the National Banking Law enacted some decades later. We do not quarrel with the principle there stated, except to point out that repeals by implication are not favored.

The character of the banking laws and the character of the Railway Labor Act as repealing statutes by implication are not at all alike. Moreover the time element between the National Banking Laws and the Insolvency Laws of 1797 and the time of approximately two years between the Norris-LaGuardia Act and the Railway Labor Act are totally dissimilar. It is impossible to see that the reason for the repeal of the insolvency laws of 1797 by the banking act forms any grounds whatever for the repeal of the Norris-LaGuardia Act by the Railway Labor Act. As petitioner's quotation says,

> "The question is one respecting the intentions of the Legislature."

D. CONCLUSION

We have thoroughly studied this petition and have carefully laid its contents alongside the rule authorizing certiorari. It fails to measure up. We submit that the grounds therein asserted for the issuance of the writ are unsupported and unconvincing. We feel that all of the parties should, at long last, in keeping with both the Norris-LaGuardia Act and Railway Labor Act, be freed from judicial restraint and be afforded an opportunity to solve their own problem.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Benning M. Grice, one of the attorneys of record for Brotherhood of Railroad Trainmen, Local Lodge No. 721, et al., respondents herein, depose and say that I have this day served a copy of the foregoing brief on Central of Georgia Railway Company, petitioner herein, by depositing the same in a United States mail box, with first class postage prepaid, addressed to John B. Miller, Esq., one of the counsel of record for petitioner, at his post office address in Savannah, Georgia.

Subscribed to before
me this June 4, 1956 ----------

Notary Public, Bibb County, Georgia

Office - Supreme Court, U.S.
FILED
JAN 2 1957
JOHN T. FEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

Case No. 84.

CENTRAL OF GEORGIA RAILWAY COMPANY,
Petitioner,

v.

BROTHERHOOD OF RAILROAD TRAINMEN;
LOCAL LODGE NO. 721, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

PETITIONER'S BRIEF ON THE MERITS.

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IN THE

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PETITIONER'S BRIEF ON THE MERITS.

Comes Now Petitioner, Central of Georgia Railway Company, and within the time permitted by the rules of this Court, respectfully submits this, its brief, on the merits of the case.

I.

OPINIONS DELIVERED BY THE COURTS BELOW.

(1)

The opinion of the United States District Court for the Southern District of Georgia, in the case at bar, styled in that court as **Central of Georgia Railway Company v. Brotherhood of Railroad Trainmen, Local Lodge No. 721**

et al., Civil Action No. 797, has not been officially reported but is printed at pages 219 through 240 inclusive in the record for this Court.

(2)

The opinion of the United States Court of Appeals for the Fifth Circuit in the case at bar, styled in that court as **Brotherhood of Railroad Trainmen, Local Lodge No. 721 et al., Appellants, v. Central of Georgia Railway Company, Appellee,** case No. 15671, is reported in 229 F. (2) 901, and printed at pages 257 through 275 inclusive in the record for this court.

II.

GROUNDS FOR JURISDICTION OF THIS COURT.

The judgment of the United States Court of Appeals for the Fifth Circuit in the case at bar was dated and entered on February 10, 1956; rehearing denied April 2, 1956. By order dated April 11, 1956, the Court of Appeals stayed mandate. Petition for Writ of Certiorari was granted by this Court on October 15, 1956. Jurisdiction of the United States Supreme Court to review the judgment of the Court of Appeals in this case is conferred by Title 28, U. S. C., Section 1254 (62 Stat. 928) and acknowledged by Rule 19 of the United States Supreme Court rules.

It is Petitioner's contentions that: (1) the opinion to be reviewed is in direct conflict with the decision of the Court of Appeals for the Seventh Circuit decided February 6, 1956, in the case of **Chicago River and Indiana Railroad Company et al. v. Brotherhood of Railroad Trainmen et al.,** case No. 11474, reported in 229 F. (2) 926; (2) the opinion sought to be reviewed decided an important Federal question which has not been, but should be, specifically settled by this Court; and (3) the opinion sought to be reviewed is in conflict with analogous and therefore applicable decisions of this Court.

III.

STATUTES INVOLVED.

This case involves the inter-relationship of the Norris-LaGuardia Act and the Railway Labor Act. The pertinent provisions of both acts are as follows:

(1)

Railway Labor Act.

"The purposes of the chapter are (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; * * * (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions." (This section was added by the 1934 amendment, 48 Stat. 1186.) (Section 1a of the Railway Labor Act; Title 45, U. S. C., Section 151a.)

"It shall be the duty of all carriers, their officers, agents and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof." (This was a provision of the Railway Labor Act of 1926, 44 Stat. 577.) (Section 2 First of the Railway Labor Act; Title 45, U. S. C., Sec. 152 First.)

"All disputes between a carrier or carriers, and its or their employees shall be considered, and, if pos-

sible, decided with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute." (This was a provision of the Railway Labor Act of 1926, 44 Stat. 578.) (Section 2 Second of the Railway Labor Act; Title 45, U. S. C., Sec. 152 Second.)

"In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: Provided (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: And Provided Further, that nothing in this chapter shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties." (This in substance was in Railway Labor Act of 1926, 44 Stat. 578.) (Section 2 Sixth of the Railway Labor Act; Title 45, U. S. C., Sec. 152 Sixth.)

"The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions, * * *, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but,

failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes." (This section was added by the 1934 amendment, 48 Stat. 1191.) [Section 3 First (i) of the Railway Labor Act; Title 45, U. S. C., Sec. 153 First (i).]

"The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award. In case a dispute arises involving an interpretation of the award, the division of the Board upon request of either party shall interpret the award in the light of the dispute." (This Section was added by the 1934 amendment, 48 Stat. 1191.) [Section 3 First (m) of the Railway Labor Act; Title 45, U. S. C., Sec. 153 First (m).]

"If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the dis-

trict court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board." (This Section was added by 1934 amendment, 48 Stat. 1192.) [Section 3 First (p) of the Railway Labor Act; Title 45, U. S. C., Sec. 153 First (p).]

(2)

Norris-LaGuardia Act.

"No Court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy in this chapter." (Section 1 of the Norris-LaGuardia Act, 1932, 47 Stat. 70; Title 29, U. S. C., Section 101.)

"In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is declared as follows:

"Whereas under prevailing economic conditions, developed with the aid of governmental authority for

owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents; in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are enacted." (Section 2 of the Norris-LaGuardia Act, 1932, 47 Stat. 70; Title 29, U. S. C., Section 102.)

"No Court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

> "(a) Ceasing or refusing to perform any work or to remain in any relation of employment." * * * (Section 4 of Norris-LaGuardia Act, 1932, 47 Stat. 70; Title 29, U. S. C., Section 104.)

IV.

QUESTION PRESENTED FOR REVIEW.

The single question presented for review is whether or not the Norris-LaGuardia Act deprives the United States District Court of jurisdiction to maintain the status quo for the purpose of preventing irreparable injury by enjoining a strike threatened by the Brotherhood of Railroad Trainmen to enforce the Brotherhood's views in a labor dispute over which the National Railroad Adjustment Board has jurisdiction, such injunction to remain in force pending the settlement of the dispute by the Board to which the dispute has been properly submitted for decision pursuant to the Railway Labor Act.

There were several ancillary questions before the Court of Appeals but the majority opinion did not decide them, the majority holding that the Norris-LaGuardia Act denied jurisdiction to the District Court to enjoin a strike irrespective of the National Railroad Adjustment Board's jurisdiction.

The question was raised in this manner:

The District Court, after a hearing on petitioner's motion for preliminary injunction, found that the Brotherhood, a duly authorized bargaining representative under and subject to the Railway Labor Act, was threatening to call a system-wide strike on the Central of Georgia Railway Company, a common carrier by rail subject to the Railway Labor Act. That such threatened strike was designed to enforce the Brotherhood's position in a dispute over which the National Railroad Adjustment Board had exclusive jurisdiction and that such dispute had been properly submitted to that Board and was then pending before that Board for decision. That such strike if put

into effect would result in irreparable injury to the Central. The District Court granted the preliminary injunction to preserve the status quo pending further order of the court, and in effect pending final hearing, and pending a decision of the dispute by the National Railroad Adjustment Board. Appeal was taken by the Brotherhood of Railroad Trainmen from the order denying its Motion to Dismiss and granting the preliminary injunction. The Court of Appeals, by a split decision, reversed the District Court holding that the Norris-LaGuardia Act was controlling and that the District Court had violated the Norris-LaGuardia Act, there being "no express provision in the Labor Act in any way limiting the scope and operation of the prohibitions of the LaGuardia Act, and the claim of implied repeal because of a necessary conflict between the two acts is not borne out by a consideration of the language of the two acts either apart from, or in connection with their legislative history". Rehearing was denied by a split decision.

Thus it is that the Court of Appeals decided only the single point.

V.

STATEMENT OF THE CASE.

The District Court has jurisdiction over this complaint because it arises under the laws of the United States and the matter in controversy exceeds the sum of Three Thousand ($3,000.00) Dollars, exclusive of interest and costs (Title 28, U. S. C., Sec. 1331); and also because the complaint arises under an Act of Congress regulating commerce (Title 28, U. S. C., Sec. 1337). Said laws of the United States and said Act of Congress regulating commerce are found in the Railway Labor Act, Title 45, U. S. C., Sec. 151, et seq.

The Central of Georgia Railway Company, by complaint, sought and the Court granted, an injunction against a threatened imminent strike by the Brotherhood of Railroad Trainmen and their craft, pending the determination by the National Railroad Adjustment Board of the dispute giving rise to the threatened strike. The strike, if called, would result in irreparable injury to the Central. The dispute involved the interpretation of an existing labor contract and had been submitted by the Railway to the Board. The dispute over the contract provision involved whether it was a basic duty of the defendants' craft to couple and uncouple air, steam and signal hose, or whether they should be paid an "arbitrary" therefor.

However, in the District Court no declaratory relief or interpretation of the contract was sought or obtained. The relief sought in the complaint basically was a preservation of the status quo to avoid irreparable injury, pending the decision of the National Railroad Adjustment Board. The relief sought was protection by a court of equity of orderly administrative procedure under the Railway Labor Act. As the Court of Appeals decision was based solely on a jurisdictional point, both the nature and the merits of the "hose coupling dispute" are not in issue. **Therefore, insofar as this review by Certiorari is concerned, it must be taken as granted that the dispute is properly before the National Railroad Adjustment Board and within the Board's exclusive original jurisdiction.** The dispute arose as follows:

On November 28, 1953, the Brotherhood of Railroad Trainmen served notice on the Central of Georgia Railway (contained in Main Exhibit "C" to complaint, alleged in paragraph 18, R. 9; found R. 36 and 37; stipulated R. 92) for a change in contract terms providing an arbitrary of $1.50 per day or trip for foremen and switchmen employed in yards and trainmen employed on switch local

assignments and or local freight assignments upon condition that said employees "may be required to couple and/or uncouple air brakes, signal and steam hose; couple or uncouple vestibule curtains." In reply to this notice the Central took the position that in a 1951 arbitration award known as the Cheney Award it had been decided with finality between the parties that such duties were a part of the basic duties of the defendants; the Cheney Award had been made a part of the collective bargaining contract between the parties; and therefore, such request for a change was contrary to the terms of the existing contract. This dispute was unsuccessfully negotiated and mediated. A strike was threatened. It was taken into the State Courts by the Central Railway and at the instance of the Brotherhood, the Supreme Court of Georgia (Sub Exhibit "J" to Main Exhibit "C", R. 75; alleged in paragraph 18, R. 9; stipulated R. 92), held that the dispute was a matter for the original primary jurisdiction of the National Railroad Adjustment Board under the Railway Labor Act. Thereupon the Central submitted the identical controversy to the National Railroad Adjustment Board for a decision. **After requesting and obtaining additional time within which to answer the submission to the National Railroad Adjustment Board**, the Brotherhood called a strike for February 18, 1955. The dispute was again negotiated and mediated; but there appeared no settlement and the strike was imminent. Thereupon the Central filed the complaint in the United States District Court for the Southern District of Georgia. Judge Brown's dissenting opinion in the Court of Appeals (R. 267) accurately described the complaint as follows:

> "• • • here injunction was sought and granted not because the contract forbade a strike, or to negotiate with the pressure of a threatened strike was a violation of the contract, but rather because the contention and counter-contention of the effect and sig-

nificance of the contract (Cheney Award) was itself a 'dispute (s) between an employee or group of employees and a carrier * * * growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions * * *', 45 U. S. C. A. 153 First (i), the determination of which is committed exclusively, where voluntary negotiations fail as they did here, to the National Railroad Adjustment Board. And if the controversy was one for the Railroad Adjustment Board, then the refusal of the Brotherhood, and its members, to allow the statutory course to be followed, and its interference in that process by a system-wide strike designed to force the issue on the very controversy before that tribunal, became, not a mere violation of a general law (unavailable as an escape from Norris-LaGuardia), but an absolute violation of the very law designed to regulate and control labor controversies of the kind involved."

To the complaint the Brotherhood filed a motion to dismiss for want of jurisdiction on the ground, among others, that the Norris-LaGuardia Act prohibited the relief sought. This was overruled. After hearing, the District Court granted the preliminary injunction, concluding that the Norris-LaGuardia Act was not intended by Congress to deprive a District Court of jurisdiction to prevent irreparable injury by maintaining the status quo in respect to a controversy which is pending before the National Railroad Adjustment Board; and that to prevent irreparable injury it was necessary to preserve the status quo of the controversy now before the Board.

The Brotherhood appealed the order denying its motion to dismiss for want of jurisdiction, and the order granting the preliminary injunction, presenting several questions.

However, the **majority opinion** of the Court of Appeals considered only the jurisdictional question, and concluded that the Norris-LaGuardia Act would prohibit a United States District Court from enjoining a threatened strike over a dispute over which the National Railroad Adjustment Board had jurisdiction and before which Board the dispute was pending for settlement at the very time that the strike was called.

Upon petition of the Central of Georgia Railway Company, this Court granted the Writ of Certiorari.

VI.

SUMMARY OF ARGUMENT.

To prevent irreparable injury, a Federal District Court has jurisdiction in a proper case to enjoin a strike in order to maintain the status quo ante in a dispute over the interpretation of a railway labor contract, where such dispute has been properly submitted to the National Railroad Adjustment Board under the Railway Labor Act for decision. On this appeal it is conceded that the Board has jurisdiction.

Where a party to such a minor dispute is dissatisfied with the results of negotiations at the railway management-labor level, and submits the dispute to the Adjustment Board for decision, such "statutory arbitration procedure" is mandatory upon the other party. The other party cannot resort to self-help pending the decision of the Board. In other words, the procedure is compulsory. This conclusion is supported by the legislative history of the Railway Labor Act and by judicial decision.

Therefore, when a union calls a strike over such a dispute in such a case the Federal District Court, to prevent irreparable injury, may maintain the status quo ante of the dispute by enjoining the strike pending Board action. The Court may so enforce the positive mandates of the Railway Labor Act under the Court's general equity powers to prevent irreparable injury.

The Norris-LaGuardia Act was not intended by Congress to prevent a Federal Court from exercising such jurisdiction. To hold otherwise would be to permit the Norris-LaGuardia Act to completely nullify the positive mandates of the Railway Labor Act providing for the orderly settlement of minor disputes.

VII.

ARGUMENT.

The practical effect of the majority opinion of the Court of Appeals in this case is that, **because of the Norris-LaGuardia Act**, the disputes settlement machinery of the Railway Labor Act is merely optional in so far as a railroad labor union is concerned and may be disregarded by such union. However, this conclusion is contrary to the decisions of this and inferior federal courts. The Court of Appeals decision is also completely inconsistent with the purpose and legislative history of the Railway Labor Act.

The majority opinion reached its conclusion in the main by following its own reasoning in **Carter v. Herrin**, 131 F. (2) 557 (5th C. 1942), which held that the Norris-LaGuardia Act prevented a Federal Court from enjoining a strike. We do not take issue with that case on its own facts but it is entirely unrelated to our case. We are here concerned with the Railway Labor Act and a railway labor dispute over which the National Railroad Adjustment Board has jurisdiction. The Carter case involved a dispute over the right of union to represent the employees of a Trucking Company.

In the case at bar, the Court of Appeals held (R. 261 through 262):

> "In this view it is not necessary for us to determine whether, as contended by appellees, the strike, if called, would be violative of the Railway Labor Act, upon the theory either that it would violate the contract providing for the Cheney Award, **or that it would violate the spirit and purpose of the Labor Act to conduct a strike while the issue which brought it about was pending before the Adjustment Board with**

jurisdiction to decide it. This is so because the fundamental weakness of appellee's position is that there is no express provision in the Labor Act in any way limiting the scope and operation of the prohibitions of the LaGuardia Act, and the claim of implied repeal because of a necessary conflict between the two acts is not borne out by a consideration of the language of the two acts either apart from, or in connection with their legislative history. (Emphasis added.)

"It is true that the Railway Labor Act does contemplate that every reasonable effort will be made to maintain agreements and to avoid interruption to commerce, and it contemplates that disputes be considered, and, if possible, decided expeditiously by negotiation and that if disputes over grievances are not adjusted on the property, they may be referred by both or either of the parties to the Adjustment Board. **It is equally true, however, that none of the sections mandatorily provide that disputes must be submitted to the Board rather than being handled by the voluntary methods provided for in the same act.** (Emphasis added.)

"If, as appellee contends, Congress had, shortly after the passage of the Norris-LaGuardia Act, intended to curtail its provisions, limiting the equity jurisdiction of the courts in labor disputes so as to subject strike action to injunction, it is inconceivable, we think, that it would not have expressly so provided. Indeed, in General Committee of Adjustments, etc., v. Missouri-Kansas-Texas R. Co., 320 U. S. 323, the Supreme Court expressly held that the Mediation Board's determination of such a controversy was not justiciable. In the light of that decision, appellee is under a burden too heavy to be borne when it seeks to justify the judicial remedy sought and obtained here by invoking a jurisdiction which the Norris-La-

Guardia Act expressly withdraws from the Federal Courts.

"In short, all that is for decision on this appeal is whether the Railway Labor Act has expressly or impliedly repealed the provisions of the LaGuardia Act, denying jurisdiction to courts to enjoin strikes or work stoppages. Unless, therefore, it can be found that there has been such repeal, it is wholly unnecessary to determine whether, as appellee claims, the adjustment board has jurisdiction over the dispute or, as appellants claim, it does not have. Equally immaterial is the question whether the issue before the Adjustment Board is the same as that involved in the present case."

Thus on this review we must assume that the National Railroad Adjustment Board has jurisdiction over this dispute. (Judge Brown in his dissent in the Court of Appeals went beyond the majority opinion and held this to be true.)[1] The majority, however, did not decide that issue.

Petitioner will divide its argument on this question into two segments.

A.

The Railway Labor Act Makes It Mandatory That the Dispute Be Submitted to the National Railroad Adjustment Board When Progressed Beyond the "Property."

The Railway Labor Act provides that disputes "shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such

[1] "It seems equally plain that a genuine difference over the meaning and effect of a contract is a grievance which must be submitted to and decided by the Railway Adjustment Board, Slocum v. Delaware, L. & W. R. Co., Order of Railway Conductors of America v. Southern Railway Company, 339 U. S. 255, 94 L. ed. 811, once that procedure has been invoked by one of the parties." Judge Brown's dissent. R. 273 and 274.

disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."[2] This the Central has done.

The Railway Labor Act further provides that the decision of the Board except as to money awards shall be final and binding.[3]

Disputes and grievances over the interpretation and application of railway labor contracts arise daily in great volume throughout the railroad industry. Consistently and faithfully since 1934, with few exceptions, the Railway unions and also the carriers have submitted such disputes to the Adjustment Board when the unions or the carriers were dissatisfied with the results of voluntary settlement "on the property." This is as it should be. This complies with the declared policy and clear mandates of the Railway Labor Act. Recently the Brotherhood of Railroad Trainmen, respondent herein, has changed this practice. In the Chicago River case and in the case at bar they have resorted to the drastic action of strike rather than the National Railroad Adjustment Board. If either carriers or unions are to be permitted to resort to economic coercion rather than orderly procedure under the Railway Labor Act, the Act will become a nullity. If the Fifth Circuit decision in our case is to stand, the relative "labor peace" in the railway industry will be fearfully disrupted. The ramifications of this decision are appalling. To permit either the carriers or the unions to resort to economic pressures—lockouts—strikes—or the like—will be to produce chaos. It would defeat the prime objective of the

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[2] 45 U. S. C., Sec. 153, First (i).

[3] 45 U. S. C., Sec. 153, First (m).

authors of the 1934 amendment to the Railway Labor Act—that objective being compulsory settlement or "arbitration" of minor disputes by the Adjustment Board.[4]

To determine the intent of Congress, let us first consider the background and legislative history of the 1934 amendment to the Railway Labor Act. Excerpts from the Legislative History are set forth in Appendix "A" of this brief.

Under federal control from 1918 to 1920 the Government established a National Adjustment Board in Washington which functioned fairly satisfactorily. Then the Railroads were returned to private ownership and the Transportation Act of 1920 was enacted. It established the United States Railroad Labor Board, which handled on a voluntary basis both major and minor disputes. Then the Railroad Labor

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[4] As stated in Judge Brown's dissent, R. 274 and 275:

"The legislative scheme for these matters to be first determined by the expertise of the Adjustment Board is completely frustrated if resort by either party to court or any other activity which prevents the free functioning of this machinery is permitted. Requiring the submission of these grievances to the Adjustment Board contemplates the exercise of deliberative judgment in the light of its special industrial experience.

"No matter how informal the proceedings might be, or how unlike lawyers and judges the mechanism may function, the whole spirit is that the result is to be an informed judgment. That means that the adjustment machinery must be free to consider the controversy in the light of its inherent merits, free from extrinsic pressures. This deliberation, this exercise of judgment, cannot take place if either of the parties can marshal and deploy pressures and forces, economic or otherwise, which will interfere with or interrupt or, more likely, make altogether unnecessary or futile the operation of this machine.

"A strike, or the threat of a strike, is but one kind of interference with the orderly operation of this mandatory system. If, merely because the union might ultimately strike after a final award by Adjustment Board or decision of Mediation Board, a strike, or threat of strike, can be used initially to thwart consideration or determination, it would make the whole procedure futile. Surely, in the establishment of this system, Congress expected that machinery constructed for the purpose of eliminating strikes should have adequate means to control or regulate the force or threat of such action until the statutory device should have had an opportunity to function."

Act of 1926 abolished the United States Railroad Labor Board. For the settlement of "minor disputes" it provided "Boards of Adjustment shall be created by agreement——" It also established the "Board of Mediation" for "major disputes"; "minor disputes" being those involving contract application or interpretation, and "major disputes" being those involving contract creation or change. This voluntary machinery for "minor disputes" was not effective. Then as the Labor Spokesman, George Harrison, Grand President of the Brotherhood of Railway and Steamship Clerks, said before the House Committee Hearings on the 1934 amendment:

> "That, then, presented a very serious situation, because on some roads as many as 1,000 unadjusted disputes were in existence; and the condition got so unbearable that several of these organizations went to the extent of putting a strike ballot in the hands of their employees to leave the service of the carrier unless those controversies should be settled. That brought Presidential interference, by Executive order, and the establishment of emergency boards by Presidential proclamation, and those boards undertook to bring about a disposition of the grievances.
>
> "So, out of all of that experience and recognizing the character of the services given to the people of this country by our industry and how essential it is to the welfare of the country, these organizations have come to the conclusion that in respect to these minor-grievance cases that grow out of the interpretation and/or application of the contracts already made that they can very well permit those disputes to be decided, if they desire to progress them, to be decided by an adjustment board" (Appendix "A," p. 52).

Thus it is that prior to 1934 the voluntary adjustment of "minor disputes" had been unsatisfactory to labor as

well as to management. In that unsatisfactory atmosphere the 1934 amendment was passed. The Manager of the bill in the Senate, Senator Dill, described it (78 Cong. Rec. 12083):

> "The bill has in it provisions which the railroad employees of the country and their organizations are backing. They have agreed to submit to compulsory arbitration of their [grievance] disputes. This is a new thing in the labor world. That is something which has not been secured in any prior labor legislation that has been proposed" (Appendix "A," p. 54).

In no other Act has the legislative history more clearly reflected Congressional intent than in the legislative history of the 1934 amendment. Such history shows complete unanimity of purpose to provide a compulsory settlement of "minor disputes" which could not be settled between the parties.

The chief labor spokesman said:

> "Then the machinery provides that these controversies will be handled in conference in the usual manner, hoping that they will be settled between the parties at home. If they cannot be settled, then they go to this board" (Appendix "A," p. 50). "* * * we are now ready to concede that we (labor) can risk having our grievances go to a board and get them determined, and that is a contribution that these organizations are willing to make" (Appendix "A," p. 51).

Management's spokesman said:

> "Men and management are agreed that what they want is compulsory, prompt, and equitable settlement of disputes" (Appendix "A," p. 52).

Joseph B. Eastman, Coordinator of Federal Transportation and sponsor of the 1934 amendment, unequivocally

stated that the amendment provided for compulsory settlement of minor disputes and that the provisions of the act were enforceable by injunction. (See Appendix "A," pp. 43-49).

The Co-ordinator's attorney, Mr. Carmalt, expressed a similar opinion. (See Appendix "A," pp. 48-49).

The House and Senate Committee reports characterized the amendment as providing compulsory machinery for settlement of minor disputes, as did the Senate Floor Manager, Senator Dill. (See Appendix "A," p. 54).

The Courts have likewise interpreted the 1934 Amendment as compulsory and enforceable with regard to settlement of minor disputes:

Justice Rutledge, in the **Burley** case, contrasted the settlement procedures for "major" and "minor" disputes under the 1934 Amendment as follows:

> "Beyond the initial stages of negotiation and conference, however, the procedures diverge. 'Major disputes' go first to mediation under the auspices of the National Mediation Board; if that fails, then to acceptance or rejection of arbitration, cf. sec. 7, Brotherhood of R. Trainmen, v. Toledo, P. & W. R. Co., 321 U. S. 50, 88 L. Ed 534, 64 S. Ct. 413, 150 A. L. R. 810; and finally to possible presidential intervention to secure adjustment. Section 10. For their settlement the statutory scheme retains throughout the traditional voluntary processes of negotiation, mediation, voluntary arbitration and conciliation. Every facility for bringing about agreement is provided and pressures for mobilizing public opinion are applied. The parties are required to submit to the successive procedures designed to induce agreement. Section 5 First (b). But compulsions go only to insure that those procedures are exhausted before resort can be

had to self-help. No authority is empowered to decide the dispute and no such power is intended, unless the parties themselves agree to arbitration.

"**The course prescribed for the settlement of grievances is very different beyond the initial stage. Thereafter the Act does not leave the parties wholly free, at their own will, to agree or not to agree. On the contrary, one of the main purposes of the 1934 amendments was to provide a more effective process of settlement.** (Emphasis added.)

"Prior to 1934 the parties were free at all times to go to court to settle these disputes. Notwithstanding the contrary intent of the 1926 Act, each also had the power, if not the right, to defeat the intended settlement of grievances by declining to join in creating the local boards of adjustment provided for by that Act. They exercised this power to the limit. Deadlock became the common practice, making decision impossible. The result was a complete breakdown in the practical working machinery. Grievances accumulated and stagnated until the mass assumed the proportions of a major dispute. Several organizations took strike ballots and thus threatened to interrupt traffic, a factor which among others induced the Coordinator of Transportation to become the principal author and advocate of the amendments. The sponsor in the House insisted that Congress act upon them before adjournment for fear that if no action were taken a railroad crisis might take place. The old Mediation Board was helpless. To break this log jam, and at the same time to get grievances out of the way of the settling of major disputes through the functioning of the Mediation Board, the Adjustment Board was created and given power to decide them.

"The procedure adopted is not one of mediation and conciliation only, like that provided for major disputes under the auspices of the Mediation Board.

Another tribunal of very different character is established with 'jurisdiction' to determine grievances and make awards concerning them. **Each party to the dispute may submit it for decision, whether or not the other is willing,** provided he has himself discharged the initial duty of negotiation, Section 3 First (i). Rights of notice, hearing and participation or representation are given. Section 3 First (j). In some instances, judicial review and enforcement of awards are expressly provided or are contemplated. Section 3 First (p); cf. sec. 3 First (m). When this is not done, the Act purports to make the Board's decisions 'final and binding.' Section 3 First (m). (Emphasis added.)

"The procedure is in terms and purpose very different from the pre-existing system of local boards. That system was in fact and effect nothing more than one for what respondents call 'voluntary arbitration.' No dispute could be settled unless submitted by agreement of all parties. When one was submitted, deadlock was common and there was no way of escape. The Adjustment Board was created to remove the settlement of grievances from this stagnating process and bring them within a general and inclusive plan of decision. The aim was not to dispense with agreement. It was to add decision where agreement fails and thus to safeguard the public as well as private interests against the harmful effects of the pre-existing scheme." **Elgin, Joliet & Eastern R. Co. v. Burley,** 325 U. S. 711, at 725, 89 L. Ed. 1886, 65 S. Ct. 1282 (1945).

Many other cases have likewise held that the Adjustment Board procedure is mandatory.

In the **Slocum** case a dispute arose between two unions over which was entitled to certain work. After negotia-

tions "on the property" proved futile, the Railway filed a petition for a declaratory judgment in the State Court. Justice Black held that the State Court had no jurisdiction to adjudicate the dispute, stating:

> "It was to prevent such friction that the (May 20) 1926 Act provided for creation of various adjustment boards by voluntary agreements between carriers and workers. * * * But this voluntary machinery proved unsatisfactory, and in 1934 Congress, with the support of both unions and railroads, passed an amendment which directly created a National Adjustment Board composed of representatives of railroads and unions. * * * The Act thus represents a considered effort on the part of Congress to provide effective and desirable administrative remedies for adjustment of railroad-employee disputes growing out of the interpretation of existing agreements. * * *
>
> "We hold that the jurisdiction of the Board to adjust grievances and disputes of the type here involved is exclusive." **Slocum v. Delaware, L. & W. R. Co.**, 339 U. S. 239, at 242 and 244, 94 L. ed. 795, 70 S. Ct. 577 (1950).

In a case similar to the **Slocum** case, supra, and decided the same day, Justice Black stated:

> "After the railroad had sued in the State Court, the union filed a petition for hearing and award before the Adjustment Board. The State Court nevertheless proceeded to adjudicate the dispute. Sustaining the State Court's action would invite races of diligence whenever a carrier or union preferred one forum to another. And if a carrier or a union could choose a Court instead of the Board, the other party would be deprived of the privilege conferred by Sec. 3 First (i) of the Railway Labor Act * * * which provides that after negotiations have failed 'either party' may refer

the dispute to the appropriate division of the Adjustment Board." **Order of R. C. of America v. Southern Railway Company,** 339 U. S. 255, at 256, 94 L. Ed. 811, 70 S. Ct. 585 (1950).

In many other cases this and other Courts have held that the Adjustment Board procedure is mandatory when either party is dissatisfied with the results of negotiation "on the property."[5]

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[5] *O. R. C. v. Pitney,* 326 U. S. 561, 90 L. Ed. 318, 66 S. Ct. 322 (1946), in which two unions claimed right to supply conductors for same jobs—jurisdictional dispute—O. R. C. brought suit to enjoin Railroad from making change.

Walters v. Chicago and N. W. Ry. Co., 216 F. (2) 332 (Seventh C., 1954, No Appeal):

> "Our attention is called to the fact that Section 3 First (i) provides that after the parties have failed to reach an agreement between themselves 'the dispute *may* be referred by petition of the parties or *by either party* to the appropriate division of the Adjustment Board' (our emphasis), and that if the intent had been to make submission to the Board compulsory the word 'shall' would have been used. We think this contention is met in another case decided by the Supreme Court the same day the Slocum case was decided. In this second case, Order of Railway Conductors of America v. Southern Railway Co., * * * the Court said: 'And if a carrier or a union could choose a Court instead of the Board, the other party would be deprived of the privilege * * *.'"

to go to the Board.

Congress used the word "may" because the parties might not desire to progress the dispute beyond the negotiation stage, and "arbitration" would be compulsory only if a party decided to refer the dispute to the Board.

In *Rolfes v. Dwellingham,* 198 F. (2) 591 (Eighth C., 1952), the Court maintained the "status quo ante" in a dispute to allow time for submission to the Adjustment Board, holding (p. 594):

> "The Railway Labor Act contemplates that the Boards which it sets up shall function through process of mediation and interpretation of disputed contracts to minimize conflicts and interruptions of commerce."

The Chicago River and Indiana Railroad Company et al. v. Brotherhood of Railroad Trainmen et al., 229 Fed. (2) 926 (Seventh C.,

Thus the Courts have construed the legislative history and the 1934 Act itself as conclusive that Congress intended the Adjustment Board procedure to provide compulsory machinery for settlement of minor disputes. As is demonstrated by the cases cited above and to be cited below, the Courts have repeatedly held that neither labor nor management may resort to the Courts or to self-help for a solution of such disputes. The matter must be decided by the Board if submitted thereto by either party.

In summary, if the Adjustment Board procedure is mandatory and is to function properly, as all of the authorities hold, then certainly it is a violation of the Railway Labor Act for the union to strike to defeat such procedure pending Board action.

1956), is being reviewed with the case at bar, and will not be discussed here. But it enjoined a strike and held the Adjustment Board procedure to be mandatory:

> "We hold this to mean that a strike in regard to such minor disputes or the Board's decisions thereon, would be illegal."

Judge Brown's dissent in the case at bar (R. 267 and 268):

> "But here injunction was sought and granted not because the contract forbade a strike, or to negotiate with the pressure of threatened strike was a violation of the contract, but rather because the contention and counter-contention of the effect and significance of the contract (Cheney Award) was itself a 'dispute(s)' between an employee or group of employees and a carrier * * * growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions * * *; 45 U. S. C. A. 153 First (i), the determination of which is committed exclusively, where voluntary negotiations fail as they did here, to the National Railroad Adjustment Board. And if the controversy was one for the Railroad Adjustment Board, then the refusal of the Brotherhood, and its members, to allow the statutory course to be followed, and its interference in that process by a system-wide strike designed to force the issue on the very controversy before that tribunal, became, not a mere violation of a general law (unavailable as an escape from Norris-LaGuardia), but an absolute violation of the very law designed to regulate and control labor controversies of the kind involved."

Thus we face the question: "If a strike over a dispute before the Board would violate the Railway Labor Act, can a Federal Court of Equity restrain such a strike to permit orderly procedure under the Act?"

B.

The Norris-LaGuardia Act Does Not Prohibit a Federal District Court From Enjoining a Threatened Strike Over a Dispute Under the Jurisdiction of and Pending Before the National Railroad Adjustment Board.

In denying jurisdiction in the case at bar, the Court of Appeals majority opinion leaned heavily upon the case of **General Committee of Adjustment, etc. v. Missouri-Kansas-Texas R. Co.**, 320 U. S. 323, 88 L. Ed. 76, 64 S. Ct. 146 (1943). In that case Justice Douglas held that under the Railway Labor Act a decision of the National Mediation Board concerning bargaining representatives was not subject to court review—was not justiciable. This was a companion case to **Switchmen's Union of N. A. v. National Mediation Board**, 320 U. S. 297, 88 L. Ed. 61, 64 S. Ct. 95 (1943), with a similar holding, in which Justice Douglas recognized the existence of cases such as the one at bar when he said:

> "If the absence of jurisdiction of the federal courts meant a sacrifice or obliteration of a right which Congress had created, the inference would be strong that Congress intended the statutory provisions governing the general jurisdiction of those courts to control. That was the purport of the decisions of this Court in Texas & N. O. R. Co. v. Brotherhood of R. & S. S. Clerks, 281 U. S. 548, 74 L. Ed. 1034, 50 S. Ct. 427, and Virginian R. Co. v. System Federation, R. E. D. 300 U. S. 515, 81 L. Ed. 789, 57 S. Ct. 592. In those cases it was apparent that but for the general jurisdiction of the federal courts there would be no remedy to enforce the statutory commands which

> Congress had written into the Railway Labor Act. The result would have been that the 'right' of collective bargaining was unsupported by any legal sanction. That would have robbed the Act of its vitality and thwarted its purpose. Such considerations are not applicable here. The Act in Sec. 2, Fourth, writes into law the 'right' of the 'majority of any craft or class of employees' to 'determine who shall be the representative of the craft or class for the purposes of this Act.'"

The "Federal courts have never been shackled by Norris-LaGuardia in giving life and force to the mandates of the Railway Labor Act" (Judge Brown's dissent, R. 268).

The legislative history of the 1934 amendment to the Railway Labor Act (Appendix "A") and the following cases clearly support this conclusion.

See **Virginian Railway Company v. System Federation,** 300 U. S. 515, 81 L. Ed. 789, 57 S. Ct. 592 (1937), in which an injunction issued at the instance of the railroad union to require the railroad to recognize it and to bargain with the union as certified by the Mediation Board and not to bargain with any other union. The carrier argued that the Railway Labor Act was not mandatory and could not be enforced in a Court of Equity. It is clear that this dispute met many of the Norris-LaGuardia definitions of a "labor dispute" and the decree issued was of a type forbidden by Section 104 of the Norris-LaGuardia Act. The Supreme Court rejected the Norris-LaGuardia Act as a bar, Justice Stone stating (References are to pages in 300 U. S.):

> "The policy of the Transportation Act of encouraging voluntary adjustment of labor disputes, made manifest by those provisions of the Act which clearly

contemplated the moral force of public opinion as affording its ultimate sanction, was, as we have seen, abandoned by the enactment of the Railway Labor Act. Neither the purposes of the later act, as amended, nor its provisions when read, as they must be, in the light of our decision in the Brotherhood of R. & S. C. Clerks Case, 281 U. S. 548, 74 L. Ed. 1034, 50 S. Ct. 427, supra, lend support to the contention that its enactments, which are mandatory in form and capable of enforcement by judicial process, were intended to be without legal sanction" (p. 545).

"The peaceable settlement of labor controversies, especially where they may seriously impair the ability of an interstate rail carrier to perform its service to the public, is a matter of public concern. That is testified to by the history of the legislation now before us, the reports of committees of Congress having the proposed legislation in charge, and by our common knowledge. Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved" (p. 552).

"The power of Congress over interstate commerce extends to such regulations of the relations of rail carriers to their employees as are reasonably calculated to prevent the interruption of interstate commerce by strikes and their attendant disorders" (p. 553).

"It suffices to say that the Norris-LaGuardia Act can affect the present decree only so far as its provisions are found not to conflict with those of Section 2, Ninth, of the Railway Labor Act, authorizing the relief which has been granted. Such provisions cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act" (p. 563).

Thus it is clear that in the **Virginian** case the United States Supreme Court did not agree with the majority opinion in the Court of Appeals in our case that there must be expressed language in the Railway Labor Act overriding the Norris-LaGuardia Act.

In **Order of Railway Conductors v. Pitney**, supra, footnote 5, involving a bankruptcy reorganization Court's power to restrain a railroad from taking conductors' work from one union and giving it to another, Justice Black, in finding no irreparable injury, said:

> "Of course, where the statute is so obviously violated that a 'sacrifice or obliteration of a right which Congress . . . created' to protect the interest of individuals or the public is clearly shown, a court of equity could, in a proper case, intervene. . . . Only after the Adjustment Board acts, but not until then, can it plainly appear that such relief is necessary to insure compliance with the statute" (pp. 566 and 567 of 326 U. S.)

Graham v. Brotherhood of Locomotive Firemen and Enginemen, 338 U. S. 232, 94 L. Ed. 22, 70 S. Ct. 14 (1949), involved an action by negro firemen against the union. An injunction issued and was affirmed against the union forbidding unlawful discrimination toward colored non-members. The Court, through the late Justice Jackson, stated (p. 237 of 338 U. S.):

> "The respondent (Brotherhood) has strenuously urged throughout that in view of the provisions of the Norris-LaGuardia Act * * * the District Court was without jurisdiction to grant relief by injunction. * * *
>
> "But this is not a question of first impression. In Virginian Railway Co. v. System Federation, 300 U. S. 515, we held that the Norris-LaGuardia Act did not deprive Federal Courts of jurisdiction to compel com-

pliance with positive mandates of the Railway Labor Act, 45 U. S. C. A., Sec. 151 et seq., enacted for the benefit and protection, within a particular field, of the same groups whose rights are preserved by the Norris-LaGuardia Act. * * * We adhere to the views expressed in the Virginian case.

"But the Brotherhood urges that the controversy in the Virginian case did not involve a labor dispute within the meaning of the Norris-LaGuardia Act and that accordingly that case must be distinguished on its facts. * * * We do not accept the Brotherhood's invitation to narrow the meaning of that term. * * * Moreover, if this Court had considered that a labor dispute was not involved, it would hardly have taken the trouble, in the Virginian case, to refute contentions based upon parts of the act, which, as a whole, extends its protection solely to such disputes. * * *

"If, in spite of the Virginian, Steele and Tunstall cases,[6] * * * there remains any illusion that under the Norris-LaGuardia Act the Federal Courts are powerless to enforce these rights, we dispel it now * * *."

As Judge Brown said, the foregoing quotation from the **Graham** case completely refutes the argument of the majority opinion that had Congress intended for the Railway Labor Act to modify the Norris-LaGuardia Act, Congress would have expressly so provided. As Judge Brown also stated: "Of course, its (the majority opinion) emphasis on the prohibition of **strikes**, as such, ignores, as Justice Jackson pointed out, the wide character of controversies protected and remedies forbidden" (last sentence of footnote 5, page 270 of record).

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[6] Steele v. L. & N. R. Co., 323 U. S. 192, 89 L. Ed. 173, 65 S. Ct. 226 (1944, Justice Stone); Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, 323 U. S. 210, 89 L. Ed. 187, 65 S. Ct. 235 (1944, Justice Stone).

The testimony of Labor Spokesman George Harrison emphasizes and illustrates what Justice Jackson and Judge Brown had reference to in saying that undue emphasis on the injunction prohibition of the Norris-LaGuardia Act ignores the over-all purpose of the Norris-LaGuardia Act. Mr. Harrison stated (Appendix "A," p. 51):

> Previously these labor organizations have opposed compulsory determination of their controversies, but * * * **"these minor cases that develop out of contracts that we freely make, and which we have the right and privilege of entering into and have something to say about their terms, we are now ready to concede that we can risk having our grievances go to a board and get them determined, and that is a contribution that these organizations are willing to make."** (Emphasis added.)

Clearly it was never contemplated by Congress that Norris-LaGuardia would prohibit the appropriate enforcement of compulsory statutory arbitration. Such a situation has no relation to the purpose of Norris-LaGuardia, which is to put organized labor on an equal basis for collective bargaining and representing the employees. The case at bar involves the enjoining of a strike in order to permit the Adjustment Board to settle a controversy over a contract "that we (unions) make freely, and which we have the right and privilege of entering into and have something to say about their terms." Certainly to hold that such an injunction is prohibited by Norris-LaGuardia is to ignore "the wide character of controversies protected and remedies forbidden."

In **Texas and New Orleans Railroad Company v. Brotherhood of Railway and Steamship Clerks**, 281 U. S. 548, 74 L. Ed. 1034, 50 S. Ct. 427 (1930), **under the 1926 Railway Labor Act**, this Court affirmed a decree enjoining a railroad company from interfering with, influencing or

coercing clerical employees of the company in the matter of their organization and designation of representatives for the purposes set forth in the Railway Labor Act. Speaking for the Court, Chief Justice Hughes stated (p. 567 of 281 U. S.):

> "It is thus apparent that Congress, in the legislation of 1926, while elaborating a plan for amicable adjustments and voluntary arbitration of disputes between common carriers and their employees, thought it necessary to impose, and did impose, certain definite obligations enforceable by judicial proceedings. * * *
>
> "While an affirmative declaration of duty contained in a legislative enactment may be of imperfect obligation because not enforceable in terms, a definite statutory prohibition of conduct which would thwart the declared purpose of the legislation cannot be disregarded. . . .
>
> "The absence of penalty is not controlling. The creation of a legal right by language suitable to that end does not require for its effectiveness the imposition of statutory penalties. Many rights are enforced for which no statutory penalties are provided. In the case of the statute in question, there is an absence of penalty, in the sense of specially prescribed punishment, with respect to the arbitral awards and the prohibition of change in conditions pending the investigation and report of an emergency board, but in each instance a legal obligation is created and the statutory requirements are susceptible of enforcement by proceedings appropriate to each. The same is true of the prohibition of interference or coercion in connection with the choice of representatives. The right is created and the remedy exists. Marbury v. Madison, 1 Cranch. 137, 162, 163, 2 L. Ed. 60, 68, 69."

Brotherhood of Railroad Trainmen v. Howard, 343 U. S. 768, 96 L. Ed. 1283, 72 S. Ct. 1022 (1952), was a racial

discrimination case, the Court (Justice Black) saying (p. 774):

> "Our conclusion is that the District Court has jurisdiction and power to issue necessary injunctive powers (to enforce the Railway Labor Act) notwithstanding the provisions of the Norris-LaGuardia Act."

Despite the Norris-LaGuardia Act, the Circuit and District Courts in other cases have recognized the justification of invoking equity jurisdiction to enforce the obvious mandates of the Railway Labor Act and/or to prevent irreparable injury.

In **New York Central Railroad Company v. Brotherhood of Railroad Trainmen et al.**, 140 F. Supp. 273 (N. D. Ohio, 1956), the Court enjoined a railroad union from striking over the closing of a railroad yard in order to prevent irreparable injury to the public and to the railroad, citing the **Virginian Railway** case, supra.

In **Railroad Yardmasters of America v. Pennsylvania Railroad Company**, 224 F. (2) 226 (3rd C. 1955), the Court held that the Norris-LaGuardia Act did not prevent a Federal District Court from issuing a preliminary injunction, enjoining a threatened change in the working agreement in violation of the Railway Labor Act.

The Fourth Circuit held that the District Court should have exercised its injunctive powers to compel a carrier to bargain in good faith, citing the Virginian case. **Brotherhood, etc., v. Atlantic Coast Line R. Co.**, 201 F. (2) 36 (4th C. 1953).

In **Rolfes v. Dwellingham**, supra, Footnote 5, the Eighth Circuit recognized both the necessity and power of a Federal Court of Equity to enforce the positive mandates of the Railway Labor Act by maintaining the "status quo ante" pending the orderly functioning of the Railway Labor Act (pp. 593, 594):

"In this case the trial court exercised its equity powers only to preserve the status quo ante of the waiters in charge in relation to the railroad and the dining car steward and granted injunctive relief 'in aid of the administrative machinery provided for the adjustment of disputes in the Railway Labor Act.' It limited its injunction strictly for the purpose of affording opportunity for the administrative Board to function as contemplated by the Act. * * *

"Also we consider the decisions of the Supreme Court in Graham v. Brotherhood of Locomotive Firemen and Enginemen * * *; Virginian R. Co. v. System Fed. No. 40 * * *; Steele v. L. & N. R. Co. * * *; and Tunstall v. Brotherhood of Locomotive Firemen and Enginemen * * *, are equally conclusive that the Norris-LaGuardia Act does not deprive the Federal Courts of power to issue such an injunction as has been issued here in aid of the Administrative Board and to preserve the rights of waiters-in-charge to resort to the administrative procedure provided by Congress under the Railway Labor Act."

The District Court in the case at bar did exactly what the District Court in the Rolfes case did—merely maintained the *status quo ante* to permit the functioning of the Adjustment Board.

The Seventh Circuit, in **M-K-T Railroad Co. v. Brotherhood of Ry. & S. S. Clerks**, 188 F. (2) 302 (7th C., no record of appeal, 1951), on complaint of the carrier enjoined conflicting awards of the National Railroad Adjustment Board and maintained the status quo pending the solution of the dispute by the Adjustment Board.

Other cases of similar import are set out in the footnote.[7]

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[7] Judge Brown's dissent in the case at bar:

"Of course the Railway Labor Act is not a voluntary, free-will mechanism; it is one imposing substantial obligations on

Justice Rutledge highlights the enforceability of the duties under the Act:

"Thus, one of the statute's primary commands, **judicially enforceable,** is found in the repeated declaration of a duty upon all parties to negotiate for its settle-

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the parties, railway management and labor alike, and a Court, by injunction, can compel the parties to carry out and effectuate its aims. Texas and N. O. R. Co. v. Brotherhood, * * *; Virginian Railroad Co. v. System Federation, supra; Order of Ry. Conductors v. Pitney; E. J. & E. R. Co. v. Burley; Brotherhood of R. Trainmen v. Howard, * * *. The National Railway Labor Act is not for labor alone. To be sure, it benefits labor greatly, but its underlying purpose is to assure industrial peace in an important phase of our national economy. It is a double-track system; the train runs both ways simultaneously, and when equity can compel a Railroad to comply, R. & N. O. R. Co. v. Brotherhood, Virginian R. Co. v. System Federation, supra, so, too, may it compel obedience by unions. Brotherhood of Trainmen v. Howard; Graham v. Brotherhood of Locomotive Firemen & Enginemen, supra.

"It seems equally plain that a genuine difference over the meaning and effect of a contract is a grievance which must be submitted to and decided by the Railway Adjustment Board, Slocum v. Delaware, L. & W. R. Co., Order of Railway Conductors of America v. Southern Railway Co., 339 U. S. 255, 94 L. Ed. 811, 70 S. Ct. 585, once that procedure has been invoked by one of the parties."

In *Textile Workers Union of America v. Alco Manufacturing Co.*, the North Carolina District Court held that the Norris-LaGuardia Act did not prohibit a mandatory injunction enforcing against an employer a new right of action created under the Taft-Hartley Law. 94 F. Supp. 626 (1950, no appeal).

In *United States v. Brotherhood of Locomotive Engineers* (1948, D. C.), 79 F. Supp. 485, cert. den. 335 U. S. 867, 93 L. Ed. 412, 69 S. Ct. 137, Judge Goldsboro in enjoining a railroad strike at the instance of the Government held that the Norris-LaGuardia Act should not be taken literally.

In the case of *Railway Employees Coop. Assn. et al. v. A. B. & C. R. Co.*, 22 F. Supp. 510 (no appeal) (Ga., 1938), the District Court enjoined a railroad from interfering in the selection of a bargaining representative and from complying with an agreement with another union *pending a decision of the controversy by the National Mediation Board.* He held that the Railway Labor Act created property rights which will be protected by a court of equity despite the Norris-LaGuardia Act.

ment. * * * At successive stages of the statutory procedure other duties are imposed." Note 12, p. 721 of the **Burley** case, supra.

In a very recent case, **Local 19, Warehouse, etc., v. Buckeye Cotton Oil Co.**, 236 F. (2) 776 (6th Cir., 1956), the Sixth Circuit held that the Norris-LaGuardia Act did not prohibit issuance of injunction to compel arbitration of dispute involving a labor contract. The contract provided for arbitration, as does the Railway Labor Act. The Railway Labor Act requires "arbitration" before the Adjustment Board. The **Buckeye** case contains an exhaustive citation of authorities, including the **Virginian** and **Graham** cases.

In the **Chicago River and Indiana Railroad Company** case, supra, the Seventh Circuit in sustaining the enjoining of a strike stated with unequivocal clarity (229 F. [2] 932):

"Accordingly, the 1934 amendments to the Railway Labor Act were enacted. They provided *inter alia* for compulsory and determinative adjustment of minor disputes. As we have already seen, the compulsory features of the Railway Labor Act are enforceable by injunctions issued by the federal district courts. We cannot presume that Congress, in so amending the Railway Labor Act in 1934, intended that such an injunction could not issue unless compliance was first had with the Act of 1932 dealing with the general subject of injunctions in labor disputes.

"The Railway Labor Act, as amended in 1934, embodies a complete plan for avoiding any interruption to commerce or to the operation of any carrier engaged therein. It is directed to the needs of the railroad industry, employers and employees alike, having in mind the paramount interest of the public. It does not call for the aid of, or submit to, the limitations of

the Norris-LaGuardia Act. Indeed, the provisions in regard to injunctions prohibiting strikes in labor disputes, as contained in the Norris-LaGuardia Act, if controlling in a situation such as we have here, arising under the Railway Labor Act, would practically render the compulsory features of the latter act nugatory. We are unimpressed with the argument of Trainmen's counsel that damages suffered by the many persons who might be injured by such a strike could be compensated in private suits brought therefor. A right to relief by suit for damages in such a situation would be an illusory remedy and a poor protection of the public interest. The effect of a strike against the railroads of the nation requires the expeditious intervention of a court to safeguard that interest. This can be accomplished only by the prompt employment of a court's equitable powers, primarily its injunctive power. The compulsion inherent in the Railway Labor Act requires prompt and effective use of judicial machinery and, there being no clear intention contained in that act to the effect that the Norris-LaGuardia Act prohibits or limits the issuance of injunctions to implement the Railway Labor Act, we hold that the Norris-LaGuardia Act does not apply to the case at bar."

The above cases are clear authority that the Norris-LaGuardia Act does not hinder a Federal District Court in protecting proper procedure under the Railway Labor Act, and in a proper case enjoining a strike.

There is no difficulty reconciling the Norris-LaGuardia Act with the Railway Labor Act. As was so aptly expressed in Judge Brown's dissent (R. 268 and 269):

> "And if the controversy was one for the Railroad Adjustment Board, then the refusal of the Brotherhood, and its members, to allow the statutory course

to be followed and its interference in that process by a system-wide strike designed to force the issue on the very controversy before that tribunal, became, not a mere violation of a general law (unavailable as an escape from Norris-LaGuardia), but an absolute violation of the very law designed to regulate and control labor controversies of the kind involved.

"Ignoring this latter point with an undue preoccupation with artificial concepts of partial repeal or implied repeal of Norris-LaGuardia is, I think, the defect of the majority opinion. The question is not: which repeals the other, and to what extent? It is rather the problem of frequent necessity in adjudication where two or more statutes, each bespeaking its own major policy, are accommodated and adapted to assure that the total policy reflected by all is effectuated.

"This approach, substantiated by abundant authorities, has special merit here. Both statutes are the offspring of a common era, enacted (1932 and 1934) near the same time, with each intended as a major, deliberate and far-reaching change in national labor policy. Neither was intended as the repeal of the other. The enactment of one was not the repudiation of the policy of the other. They exist side by side and where, through the years, they have come into apparent collision, the courts, unfettered by awkward concepts of repeal, have found the way by which now one, now the other, has found dominant and controlling.

"In this light, Federal Courts have never been shackled by Norris-LaGuardia in giving life and force to the mandates of the Railway Labor Act. Virginian Railway Co. v. System Federation; Graham v. Brotherhood of Locomotive Firemen and Enginemen."

Also the majority opinion in seeking an express provision of the Railway Labor Act which withdrew the application of the Norris-LaGuardia Act is also diametrically

in conflict with the cardinal principle of statutory construction, enunciated by this Court in **Cook County National Bank v. United States**, 107 U. S. 445, 27 L. Ed. 537, 2 S. Ct. 561 (1883), in which it was stated:

> "A law embracing an entire subject, dealing with it in all of its phases, may thus withdraw the subject from the operation of a general law as effectually as though, as to such subject, the general law were in terms repealed. The question is one respecting the intention of the legislature."

We submit that the foregoing authorities lead to the inescapable conclusion that by congressional mandate the Adjustment Board procedure is compulsory, and that such clear mandates of Congress will be enforced by Federal District Courts sitting in equity.

It is, therefore, respectfully submitted that the opinion of the Court of Appeals for the Fifth Circuit in this case should be reversed and the cause remanded for further proceedings consistent with the opinion of this Court.

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Certificate of Service.

I, John B. Miller, Counsel for Petitioner, do hereby certify that I have served a copy of the within and foregoing brief upon Counsel of Record for Respondents by first-class mail with proper postage affixed to their office addresses.

This 31 day of December, 1956.

.....

John B. Miller.

APPENDIX "A" TO BRIEF OF PETITIONER, CENTRAL OF GEORGIA RAILWAY COMPANY.

Legislative History of 1934 Amendment to Railway Labor Act.

The Legislative History of the (National) Railway Labor Act Amendment of 1934[1] makes it clear that the amendment was designed to make the National Railroad Adjustment Board procedure compulsory in nature when either the carrier or the employees desired to progress minor disputes beyond the "chief operating officer of the carrier designated to handle such disputes." The following abstracts establish beyond doubt that Congress intended the Adjustment Board procedure to be compulsory (References are to the pages of the transcripts of the respective hearings):

JOSEPH B. EASTMAN.

Joseph B. Eastman, Federal Coordinator of Federal Transportation and prime author and supporter of the 1934 Amendment, testified before the Senate Committee (Senate Hearing, p. 15):

The Chairman (Senator Dill of Washington). "There is no compulsory method of having these Boards created?" (Referring to the 1926 law.)

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[1] Hearings before the Committee on Interstate Commerce—United States Senate—73rd Congress, 2nd Session on S. 3266; Hearings before the Committee on Interstate and Foreign Commerce—House of Representatives—73rd Congress, 2nd Session on H. R. 7650 (and H. R. 9689); Report of Senate Committee on Interstate Commerce upon S. 3266 of May 10, 1934 (Senate Report No. 1065, 73rd Congress, 2nd Session) and Report of House Committee on Interstate and Foreign Commerce upon H. R. 9861 of June 11, 1934 (House Report No. 1944, 73rd Congress, 2nd Session) and comment on the floors of Congress.

Mr. Eastman. "No."

The Chairman. "Is there in the new law?"

Mr. Eastman. "Yes."

The Chairman. "Is it compulsory?"

Mr. Eastman. (Senate Hearing p. 16) "The new law provides definitely for a National Board of Adjustment as I shall explain. * * *

Mr. Eastman. "Yes.

"The National Adjustment Board is to handle only the minor cases growing out of grievances or out of the interpretation or application of agreements. Provision is also made so that deadlocks will be impossible. When the regular members, who will be equally divided between the two sides, disagree, they must call in a neutral member appointed by the Mediation Board to decide the case. * * *

"The willingness of the employees to agree to such a provision is, in my judgment, a very important concession and one of which full advantage should be taken in the public interest. I regard it as, perhaps, the most important part of the bill. * * *"

At Senate Hearings, page 155, the Chairman asked:

"I want to ask you a question, there. The theory, as I understand, of these National Boards, is that if they are in existence and compulsory and their orders are subject to enforcement, it will result in the establishment of the Regional Boards and the Local Boards more readily than they are now established; otherwise your National Boards will be pretty badly loaded up, will they not?" (This question clearly showed the Chairman's interpretation of the compulsory nature of the 1934 amendment and Mr. Eastman's answer thereto was consistent with this interpretation.)

Mr. Eastman's testimony before the House committee was similar to his testimony before the Senate Committee,

but was even more explicit as to the compulsory nature of the Board procedure (House Hearings p. 43):

"I want to make it clear that the principle behind that Section 2 (of H. R. 9689) is exactly the same principle that is now enunciated in the present Section 2 of the present Railway Labor Act. However, so far as the present Act is concerned, there is no provision for the enforcement of that principle and it has not, in fact, been enforced." (House Hearings p. 43.) (Here again it shows that Mr. Eastman intended the Amendment to be enforceable.)

"All that we are undertaking to do is translate the principle which is now enunciated in the present Railway Labor Act into definite, specific provisions, free from ambiguities **and with adequate provisions for their enforcement.** The new Section 2 is in direct line with action which has been taken by Congress on three different occasions. It seeks only to give clarity, vitality, and positive sanctions to what is now, as far as the Railway Labor Act is concerned, no more than a pious wish * * *" (House Hearings, p. 43). (Emphasis added.)

"The bill before you, H. R. 9689, attempts to remedy both of these deficiencies in the present law. It provides for the creation of a National Adjustment Board to which unadjusted disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions may be referred. Please note that disputes concerning changes in rates of pay, rules, or working conditions may not be so referred, but are to be handled, when unadjusted, through the process of mediation. The National Adjustment Board is to handle only the minor cases growing out of grievances or out of the interpretation or application of agreements. Provision is also made so that deadlocks will be impossible. When the regular members, who will be equally divided be-

tween the two sides, disagree, they must call in a neutral member appointed by the Mediation Board to decide the case. The willingness of the employees to agree to such a provision is, in my judgment, a very important concession and one of which full advantage should be taken in the public interest. I regard it as, perhaps, the most important part of the bill" (House Hearings, p. 47). * * *

At page 55 of the House Hearings, Congressman Cooper of Ohio was questioning Commissioner Eastman as follows:

Mr. Cooper. "Well, what I had in mind was this: There will probably be many disputes that might be settled between the employees and the carriers without them being carried to this National Board of Adjustment."

Commissioner Eastman. "Oh; absolutely."

Mr. Cooper. "And this is only in the last resort."

Commissioner Eastman. "That is right."

Mr. Cooper. "In case the carriers and employees cannot get together in conferences then, as a last resort, it goes to one of these four divisions of the National Board of Adjustment for settlement."

Commissioner Eastman. "That is correct" (House Hearings, p. 55).

This colloquy shows that if the parties cannot settle the dispute "on the property" "as a last resort it goes" to the Board—it is compulsory that it goes there.

Congressman Pettengill of Indiana questioned Mr. Eastman at page 58:

Mr. Pettengill. (House Hearing, p. 58) "And, this Act does not make a matter of agreeing to arbitrate (before the National Railroad Adjustment Board) as a matter of discretion? It makes it a matter of duty on the part of the parties to this dispute."

Commissioner Eastman. "Yes; and it is my understanding that the employees in the case of these minor griev-

ances—and that is all that can be dealt with by the Adjustment Board—are entirely agreeable to those provisions of the law.

"I think that it is a very important concession on their part. It does not go to the major issues with reference to wages and working rules; but to all disputes except working rules and wages."

This colloquy likewise shows beyond doubt that the Congressmen understood the bill to make it "a matter of duty" and not "a matter of discretion" to go to the Board as a last resort.

Then the Hearing goes on to discuss whether or not the Act, in effect, prevents strikes over disputes involving these minor issues. Congressman Cooper questioned whether employees should give up the right to strike over such minor disputes. Commissioner Eastman stated (House Hearing, p. 60): "Well, as I say, you have exactly similar provisions in the present Labor Act with respect to decisions by Adjustment Boards (that is that the decision shall be final and binding) and where they agree to arbitration, **and this law is in effect an agreement on the part of the parties to arbitrate all of these minor disputes.**" (Emphasis added.)

The Chairman (Mr. Sam Rayburn). "Was that not one of the reasons, to try to keep down strikes to get people together?"

Commissioner Eastman. "Yes. It is a very important part of it. The willingness of the employees to agree to a provision of that sort seemed to me to be a very important and praiseworthy thing."

Congressman Wolverton asks this question. (House Hearings p. 61):

"Is there any provision in this bill that would enable the Court to obtain an injunction against a labor organization which is dissatisfied with the final decree and refuses to comply with it?"

Commissioner Eastman. "Well, I am not able to give you an answer to that. That is a legal question, to be frank with you, that I have not gone into."

Mr. Wolverton. **"It would seem to me that the provisions or language of the bill itself would answer that question. And is it contrary to public policy to have such a provision in there?"** (Emphasis added.)

Commissioner Eastman. "Well, it is my opinion that there ought not to be strikes with reference to minor grievances of that sort. I should be very unwilling to take away from the employees the right to strike on major issues, but these are not major issues" (p. 61).

Continuing with a discussion of whether or not an injunction should issue to enforce an award of the Adjustment Board, Mr. Carmalt, a draftsman of the bill and Attorney for Commissioner Eastman, stated that it was his opinion under the proposed amendment that an injunction would issue to enforce the award. Mr. Carmalt said:

"The original House Bill on this question, was drawn by the employees and the language was, I think, brought directly over in the same form that the employees presented it.

"The question has not arisen therefore, before this morning, and I am more or less thinking out loud in connection with it, because of that fact, but it has seemed to me that the implication lay, from the form of the bill, that a strike on account of these minor grievances would not be permitted and might be enjoined (House Hearings p. 62).

"My opinion is that there should not be the right to strike over grievances of this kind where the Government has provided the machinery whereby the grievances may be considered by an impartial Board" (House Hearings p. 63).

Mr. Wolverton. "Do you think that the language that has been referred to by Mr. Eastman, as conferring this absolution, so to speak, so far as an employee is con-

cerned, would provide equal protection to the organization itself?"

Mr. Carmalt. "No; I think this injunction would run rather as against a strike. There is no other means of resisting the order. But, as to the individual quitting, I think the absolution would be effective" (House Hearings p. 63).

The above makes it abundantly clear that "minor disputes" as a last resort must go to the Board and a strike over such disputes would be enjoined.

GEORGE M. HARRISON.

George M. Harrison, Grand President of the Brotherhood of Railway and Steamship Clerks, appeared before the Senate and House Committees as Chairman of the Legislative Committee of the Railway Labor Executive's Association, "speaking for the 21 standard railway labor organizations," including the Brotherhood of Railroad Trainmen, Respondent in this proceeding. Mr. Harrison was and is an outstanding labor's spokesman and a strong advocate of the amendments. He discussed the experience of voluntary national boards of adjustment under the Transportation Act of 1920 and voluntary regional boards of adjustment as well as national boards of adjustment under the Railway Labor Act of 1926. Then before the Senate Committee, referring to the 1934 amendment, he said:

"Now this law is designed by the establishment of the National Board—this bill, S. 3266, is designed by the establishment of a national Board to overcome our experiences and the difficulties that developed out of that situation. The language suggests first, that there shall be a National Board established; that means that it is mandatory and must be set up. * * * (Senate Hearing, p. 30).

"The personnel of the Board will be 18 representatives of the employees and 18 of the railroads. In the event

either party fails to select a representative, the Secretary of Labor will appoint them. That Board will have jurisdiction over all controversies growing out of grievances or out of interpretation and/or application of rules and agreements. * * * (Senate Hearings, p. 31).

"Then the machinery provides that these controversies will be handled in conference in the usual manner, hoping that they will be settled between the parties at home. If they cannot be settled, **then they go to this board**" (Senate Hearing, p. 31).

"Then we provided, in order to overcome our past experience, that the decision when made by the Adjustment Board shall be enforceable. We have had several instances where, even though the law provides that the agreements setting up the Board shall provide for the acceptance of the decision by the parties, that the decisions haven't been obeyed" (Senate Hearing, p. 32).

Mr. Harrison continued: "Most of the boards that have been established under the present law have been unable to reach a decision. They have deadlocked on any number of cases. As a result of that there was fast growing up in our industry a serious condition that might very well develop into a substantial interruption of Interstate Commerce, the very thing the law provided machinery to minimize. * * * Grievances are instituted against railroad officers' actions, and we are willing to take our chance with this National Board because we believe, out of our experience, that the National Board is the best and most efficient method of getting a determination of these many controversies that arise on these railroads between the officers and the employees" (Senate Hearing p. 33).

Mr. Harrison. "We have had experience for 14 years under these boards, and we hope that the committee will give us this National Board, because if it is not approved and put into law, we will be unable to work out satisfactory machinery by mutual agreement. The only reason we will be able to agree on the other machinery is because we

have this board set up by law that we can go to if we can't get an agreement on something else. It is a very troublesome problem and I just want to make this observation: **These railway labor organizations have always opposed compulsory determination of their controversies. We have lived a long time and got a lot of experience, and we know that these minor cases that develop out of contracts that we make freely, and which we have the right and privilege of entering into and have something to say about their terms, we are now ready to concede that we can risk having our grievances go to a board and get them determined, and that is a contribution that these organizations are willing to make.**" (Emphasis added.) (Senate Hearing, pp. 34 and 35.)

"**I just want to tie this tail onto that kite—if I may express it that way—that if we are going to get a hodgepodge arrangement by law, rather than what is suggested by this bill, then we don't want to give up that right, because we only give up that right because we feel that we will get a measure of justice by this machinery that we suggest here.**" (Emphasis added.) (Senate Hearing, p. 35).

Mr. George M. Harrison in his supplemental written statement filed with the Senate Committee had this to say, printed at page 167 of the report:

"**Brought face to face, finally, with the prospect of compulsory settlement of grievance disputes,** railway managements have urged upon the committee the desirability of regional boards of adjustment instead of a National Board." (Emphasis added.)

George M. Harrison again gave similar testimony before the House Committee. He discussed the history of labor controversies in the railroad industry and in discussing disposition of the grievances under the Railway Labor Act of 1926 he stated (House Hearings, p. 81):

"That, then, presented a very serious situation, because on some roads as many as 1000 unadjusted disputes were in existence; and the condition got so unbearable that several of these organizations went to the extent of putting a strike ballot in the hands of their employees to leave the services of the carrier unless these controversies should be settled. That brought Presidential interference, by Executive order, and the establishment of emergency boards by Presidential proclamation, and those boards undertook to bring about a disposition of these grievances.

"So, out of all of that experience and recognizing the character of the services given to the people of this country by our industry and how essential it is to the welfare of the country, these organizations have come to the conclusion that in respect to these minor-grievance cases that grow out of the interpretation and/or application of the contracts already made that they can very well permit those disputes to be decided, if they desire to protest them, to be decided by an adjustment board * * *" (House Hearings, pp. 81 and 82).

So we see that George Harrison, labor's spokesman, recognized the compulsory nature of the Board procedure and advocated it as a contribution of labor.

M. W. CLEMENT.

Mr. M. W. Clement, Chairman of the Committee of the railroads delegated to deal with the proposed amendments to the Railway Labor Act, testified before the Senate Committee:

"**Men and management are agreed that what they want is compulsory, prompt and equitable settlement of disputes.** How is this best arrived at? None of the things proposed in this bill is new. We have had National Boards, both in the Boards of Adjustment during the Government administration of railroads and in the United

States Labor Board. We have had regional boards. We have had system boards. We have had President's emergency boards, and we have had arbitration boards." (Emphasis added.) (Senate Hearings, p. 67.)

Then Mr. Clement went on to argue against National Boards. Mr. Clement continued: "When men and management sat down eight years ago, neither side was willing to write into that Act compulsion. We have experienced the acts for eight years, and both sides are now willing to sit down together and write in compulsion. That is the defect of the present act" (Senate Hearings, p. 69).

Thus it is clear that the carriers also interpreted the amendment as providing a compulsory disposition of minor disputes.

Thomas P. O'Brien, representing the International Brotherhood of Teamsters, also recognized that the Board procedure would be compulsory (House Hearings, p. 118).

The Senate and House Committees clearly accepted the foregoing interpretation of the compulsory and enforceable nature of the Board procedure.

SENATE COMMITTEE REPORT.

Thus, the Senate Report stated:

"Both representatives of the carriers and of the employees agree that the setting up of boards for the settlement of disputes should be made compulsory, when necessary. Representatives of the carriers proposed that the setting up of regional boards be made compulsory; representatives of most of the employees insisted that the setting up of the National Board of Adjustment with four divisions be made compulsory" (Senate Report No. 1065 [73rd Congress, 2d Sess.], pp. 1-2).

HOUSE COMMITTEE REPORT.

The House Report stated:

"7. The second major purpose of the bill is to provide sufficient and effective means for the settlement of minor disputes known as 'grievances,' which develop from the interpretation and/or application of the contracts between the labor unions and the carriers, fixing wages and working conditions. The present Railway Labor Act provides for the establishment of boards of adjustment by agreement. In many instances, however, the carriers and the employees have been unable to reach agreements to establish such boards.

"This bill, therefore, provides for the establishment of a National Board of Adjustment to which these disputes may be submitted if they shall not have been adjusted in conference between the parties" (House Report No. 1944, 73rd Cong., 2d Sess., pp. 2-3).

The House Report also stated (at p. 4) that if the parties should agree on voluntary machinery to substitute for the National Railroad Adjustment Board, "then the parties are exempt from the jurisdiction of this National (Railroad Adjustment) Board."

FLOOR OF CONGRESS.

On the floor of Congress the bill was described as providing for compulsory settlement of disputes:

Senator Dill (78 Cong. Rec. 12083):

"The bill has in it provisions which the railroad employees of the country and their organizations are backing. They have agreed to submit to compulsory arbitration of their (minor) disputes. That is a new thing in the labor world. That is something which has not been secured in any prior labor legislation that has been proposed."

FILED
JAN 25 1957
JOHN T. FEY, Clerk

In The Supreme Court Of The United States

October Term, 1956

Case No. 84

CENTRAL OF GEORGIA RAILWAY CO.,
Petitioner,

v.

BROTHERHOOD OF RAILROAD TRAINMEN, LOCAL LODGE NO. 721, ET AL.,
Respondents

On Writ Of Certiorari To The United States Court Of Appeals
For The Fifth Circuit

RESPONDENTS' BRIEF ON THE MERITS

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RESPONDENTS' BRIEF ON THE MERITS

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A. FEDERAL STATUTES INVOLVED

In addition to those federal statutes specified by petitioner we add these:

Sec. 104 in full of the Norris-LaGuardia Act.

"No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in Section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in Section 103 of this title. Mar. 23, 1932, c. 90, Sec. 4, 47 Stat. 70."

Sec. 105 of the Norris-LaGuardia Act.

"No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in Section 104 of this title. Mar. 23, 1932, c. 90, Sec. 5, 47 Stat. 71."

B. THE QUESTION PRESENTED

Respondents disagree with the petitioner's statement of the questions presented; and say that applied to the facts, the question is whether the Court of Appeals was right in overturning the order of the District Court enjoining a threatened strike of certain railroad employees, in holding that the injunction was in violation of the Norris-LaGuardia Act under the circumstances presented in the record, and in ordering the dismissal of the suit for want of jurisdiction.[1] While the Court of Appeals said

> "In short, all that is for decision on this appeal is whether the Railway Labor Act has expressly or im-

1. See also statement of the question presented at page 3 of respondents' brief in opposition to the petition for certiorari; and motion to dismiss filed in the District Court at page 88 of the record.

pliedly repealed the provisions of the LaGuardia Act, denying jurisdiction to courts to enjoin strikes or work stoppages."

it nevertheless went on to decide several other issues as well in respondents' favor. Respondents say said issues were all correctly decided.

C. STATEMENT OF THE CASE

The Complaint, The Hearing, And The Injunction

Respondents do not accept petitioner's statement of the case. We state it thus:

The record shows that the District Court enjoined a threatened strike on petitioner's railway (R. 237); and that the Court of Appeals, reversing, held that respondents' motion to dismiss should have been granted and that the District Court had exceeded its jurisdiction in the issuance of the injunction.

Both the complaint (R. 3) and injunction (R. 237) were directed against a threatened strike and picketing by certain of petitioner's employees. The strike had been threatened in support of respondents' demand for a new wage rule relating to the coupling of air, signal and steam hoses on the trains on petitioner's property. The demand for the new rule, under Section 6 of the Railway Labor Act, was served on the carrier on November 28, 1953 (R. 36). It was not negotiated on the property in good faith but was litigated in the state courts, and mediated under the auspices of the National Mediation Board for 14 months when finally sometime between January 17, 1955, and January 31, 1955, the carrier undertook to checkmate respondents' move by filing an ex parte submission with the National Railroad Adjustment Board; and on February 23, 1955, petitioner instituted the present litigation (R. 3).

The employees had filed no time claims or grievances in connection with the dispute.

In resisting the demands of its employees the carrier asserted the claim that a new rule was not in order as the old rule somehow was permanent and forever binding. The old rule had been established by what is known as the Cheney Award, which was rendered by an arbitrator incidental to the national wage settlement of May 25, 1951. The award became a component part of the national wage settlement, and all of it was subject to a specified moratorium which expired on October 1, 1953.

Petitioner at no time has claimed that there was any question as to the meaning or intent of the award other than its supposed permanency.

Contrary to what is stated on page 10 of petitioner's brief it is *NOT* taken for granted that the dispute is properly before the National Railroad Adjustment Board and within the Board's exclusive jurisdiction. This unfounded assumption runs throughout its brief. That it had no jurisdiction whatever will be treated later in respondents' brief.

In passing, it should be noted that the state court litigation, to which petitioner refers, sought to enjoin the threatened strike and to obtain a declaration that the Cheney Award was forever unchangeable; and that the trial court ruled in respondents' favor on the merits and was reversed by the Supreme Court on grounds of lack of jurisdiction.

The Federal Court complaint, again seeking to enjoin the strike, is voluminous. It includes many wage agreements, the Cheney Award, the opinion of the Georgia Supreme Court and the ex parte submission to the Adjustment Board by the carrier.

Respondents' motion to dismiss (R. 88) the Federal Court complaint and its answer thereto were predicated upon the following grounds.

1. Failure to state a claim upon which relief could be granted;

2. Lack of jurisdiction of the subject matter;

3. Lack of jurisdiction because of carrier's failure to exhaust its administrative remedies; and

4. The complaint on its face shows circumstances which establish lack of jurisdiction under the Norris-LaGuardia Act for the sole relief sought; viz, the issuance of an injunction.

Upon hearing the injunction was granted notwithstanding the fact that no evidence whatever was produced to show any threatened or actual violence, any resort to police protection, any need therefor, or any inadequate police protection.

The court overruled each and every ground of the motion (R. 89) and granted the injunction (R. 237)[2] all of which respondents contend constituted error.

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2. The injunction provided: "Pending further order of this Court and pending a final hearing in this case, the Defendants in this cause and each of them, their agents, representatives and all parties acting through or under them, or through their order, be and they are hereby restrained and enjoined by this preliminary injunction from threatening to or from calling a strike, work stoppage, or picketing, system-wide or local, of any kind or character, or from using any similar device, either directly or indirectly, through themselves, their agents or others, against the Central of Georgia Railway Company, and from striking, stoppage of work, picketing or from using any similar device, in an effort to or designed or intended:

A. To compel the Plaintiff to agree with the Defendants to a cancellation, modification, change or revision of the award of Referee George Cheney dated August 1, 1951, to wit: . . .

B. To compel the Plaintiff to agree to or consumate a rule or contract provision with the Defendants inconsistent with the Cheney Award, and specifically from compelling the Plaintiff to agree with Defendants to the following Rule first proposed by the Defendants on November 28, 1953, or any similar contract provision; . . .

C. To compel the Plaintiff to agree to or to consumate a contract provision with Defendants prescribing extra compensation to Defendant Class of employee for uncoupling air, steam or signal hose, which would in any way be inconsistent with the aforesaid Cheney Award."

The Contentions Of The Parties

Petitioner contends here that the injunction was authorized upon the ground that the dispute was a grievance over the interpretation of the Cheney Arbitration Award. It says that the Railway Labor Act makes it mandatory that where there has been a submission to the National Railroad Adjustment Board there can be no strike pending such submission, and injunction will lie to restrain such, regardless of the provisions of the Norris-LaGuardia Act which expressly prohibits a federal court from granting an injunction in a labor dispute. Concisely, it argues that the Adjustment Board machinery is now "compulsory," is exclusive, and therefore is the only method by which disputes of this type may be handled. In short, the contention is that the present Adjustment Board machinery has been substituted for strikes. Thus, it seeks to require that disputes such as this be participated in by employees without any hint, possibility, or use of their economic strength.

But respondents contend that petitioner's eventual submission of a dispute with the Adjustment Board was conceived as a road-block to respondents' demands for a new contract rule, and was in complete defiance of the collective bargaining process. We urge that the Norris-LaGuardia Act policy (Section 2) embraces the freedom of employees "to negotiate the terms and conditions of . . . employment." Respondents contend that probably no new rule was ever demanded which could not have been said in some way to reflect upon the scope, application or interpretation of existing rules. We submit that Congress never intended the collective bargaining process to be sterilized by such ingenious invocations of the Adjustment Board jurisdiction, as that which petitioner undertook, and never intended that the right to strike could thereby be defeated. In addition, numerous other reasons shown in the record and establishing complete lack of authority for the issuance of the injunction and proving that the motion to dismiss should have been granted will be discussed. The very

foundation of respondents' contentions is that the Norris-LaGuardia Act prohibits the granting of an injunction under the facts shown by this record.

Respondents are compelled to point out several other inaccuracies in the petitioner's statement of the case. The significant fact is that an injunction was granted enjoining a strike. Furthermore, this dispute was never negotiated in good faith or fully mediated (contrary to what is stated on page 11 of such brief). The petitioner refused to negotiate in good faith and actually filed the suit while the mediator was still on the property exercising jurisdiction over the controversy. The reference to the Supreme Court of Georgia having held that the Adjustment Board had jurisdiction over the dispute was, of course, predicated upon what the carrier's petition then and there before it *alleged*, not what the evidence later disclosed as to the character of the dispute. Furthermore, the record confirms that the respondents never filed any answer to the submission to the Adjustment Board. Reference to the Court of Appeals dissenting judge's opinion in describing the complaint is certainly not factual, but conclusory, and has no place in the statement of facts.

D. THE ARGUMENT

A Summary

This case involves a dispute over a demand for a new contract rule, not a grievance or so-called minor dispute. Our argument is made in four points.

POINT ONE is that in overruling respondents' motion to dismiss and in granting the injunction the trial court violated the Norris-LaGuardia Act in three different and independent particulars. The *first* is that Section 104 of that act prohibits a federal court from enjoining a strike itself (where no violence is present) irrespective of the remaining provisions of

that act and regardless of whether the threatened strike may have, as the petitioner contends, an illegal purpose or effect either (1) to violate a contract such as the Cheney Arbitration Award here or (2) to violate the Railway Labor Act as to its administrative procedures for settlement of disputes. The *second* is that the trial court's action also violated Section 107 of that act which requires allegations, evidence and findings that unlawful acts have been threatened and will be committed unless restrained *and* also requires that inadequate police protection be alleged, proved and found. The *third* is that the District Court failed to make and file its findings prior to the issuance of the injunction as is required by Section 107 of the same act.

POINT TWO is that the Railway Labor Act as amended in 1934 did not repeal these provisions of the Norris-LaGuardia Act, passed just two years previously. Petitioner cannot, of course, find any express language effecting any such repeal and is compelled to contend that it was repealed by implication. We show that there can be no implied repeal of such an important landmark of legislation as this. For, we point out that the legislative history negatives any implied repeal, that the courts have spoken against it, and that recent decisions have recognized the applicability of the Norris-LaGuardia Act to the Railway Labor Act.

POINT THREE stresses that such 1934 amendments to the Railway Labor Act did not authorize injunctions in a situation such as here. We go into the legislative history and much of that applies equally to Point Two and this one to show that railway labor employees may press their demands for improved working terms and conditions by economic strength regardless of management's plans to thwart their efforts by sidetracking the dispute to an administrative board as here.

POINT FOUR is that the injunction violated the purposes of both the Railway Labor Act and the Norris-LaGuardia Act. We show that the carrier's strategy was aimed at defeating

the prime objective of both of these acts, which is that every possible effort be made to settle differences by full opportunity for both management and labor to negotiate and seek to reach a just agreement. We insist that the action sought by the carrier here, and granted by the trial court, is contrary to the beneficient purpose of both of these two great enactments, which is founded upon the preservation of industrial peace by collective bargaining.

The Fifth Circuit Court of Appeals Decision

We believe that the decision of the Fifth Circuit Court of Appeals was correct and that the opinion was sound. We are confident that the views expressed by the majority opinion are in full accord with the authorities on the subject.

Petitioner's Argument Is Fallacious

Petitioner's brief ignores the true character of the dispute involved in this case. It ignores the origin of the dispute as a demand for a new contract rule; it ignores the extended *efforts* to negotiate and the *attempts at* mediation by the National Mediation Board; and it seeks to change the character of the dispute into one of a grievance or contract interpretation, hoping thereby to checkmate the legitimate efforts of respondents to improve the working conditions and pay of the employees for whom respondents are the bargaining representative.

Petitioner's argument here is based upon the false assumption that the National Railroad Adjustment Board is vested with jurisdiction of respondents' dispute. This is revealed in the statement on page 17 of its brief, which says, "Thus on this review we must assume that the National Railroad Adjustment Board has jurisdiction over this dispute." Petitioner is of course at liberty to predicate its argument on any assumption it chooses, but such argument is supported solely by a conclusory assumption nevertheless.

Moreover, the asserted assumption is misdescribed when it is said "we must assume," etc. Respondents categorically and emphatically deny the conclusion with which petitioner clothes its assumption, as well as the assumption itself. Respondents deny that they concede the jurisdiction of the Adjustment Board over the present dispute; they deny that said dispute is properly before such Board; and they deny that whatever there is pending can lift the bar of the Norris-LaGuardia Act against injunction in labor cases.

POINT ONE. THE INJUNCTION VIOLATED THE NORRIS-LaGUARDIA ACT

Preliminary

The District Court by the issuance of the injunction violated several provisions of the Norris-LaGuardia Act, any one of which required a dismissal of the complaint and a denial of the injunction. Those violations were serious and recurring throughout the entire case. We take up this feature first for as the Court of Appeals viewed it such should dispose of the litigation.

Section 101 (29 USC Sec. 101) provides that no Federal Court has jurisdiction to issue any restraining order or injunction in a case involving or growing out of a labor dispute except in strict conformity with the provisions of Section 102 which set forth the policy of the Act. This policy is deeply imbedded throughout the Act. The reasons for its passage appear both in the legislative history and in many subsequent opinions of the courts in dealing with it. From all of it there seems to be no question that it was passed primarily to protect labor, not management, against what was considered to be unfair practices. By doing so, Congress hoped that all industry—labor and management—would benfit ultimately and that thus the Act would be in the public interest.

1. The Court Enjoined A Strike

The first violation is the enjoining of a strike. A mere casual reading of the injunction will show that this is true. This was the most obvious of all the violations, and this was the avowed purpose of the complaint and the terms of the injunction. Right here it should be borne in mind that the complaint and the injunction were not directed against any unlawful acts—violence—which oftentimes accompany a strike. For there was no violence or any unlawful acts. It sought to enjoin the strike itself as well as picketing.

The Norris- LaGuardia Act does not permit the enjoining of a strike. See Section 104 (a) of that act, 29 USC 104 (a).[3]

Thus Congress has declared that strikes and the other acts set forth in Section 104 cannot be enjoined.

In *Carter v. Herrin Motor Freight Lines,* (CA5) 131 F2d 557, the ban against injunctions barring strikes was emphasized. With respect to the policy of the Act the court stated:

> "This policy is that labor disputes, as such, with the assembling, the picketing, the persuasion, the stopping of work, the enlisting of sympathy and support, and all the other acts expressly enumerated in Section 104, were no longer to be the subject of injunctive action but were . . . legitimate means for advancing . . . "

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3. "No court of the United States shall have jurisdiction to issue any restraining order or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;"

(Then follows the other eight acts likewise exempted, such as membership in a labor organization, picketing, assembling, etc.)

Further the court said:

> " . . . the use of such injunctions in labor disputes, except for the limited purpose of preventing injury from violence where there was really no adequate remedy at law, was an abuse of legal process."

In *Third Avenue Transit v. Quill* (CA2), 192 F2d 971, the District Court had issued an injunction against a threatening strike. The order was reversed by the Court of Appeals which stated:

> "What is pertinent is Sec. 104 of Title 29 which provides that 'no court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute . . . from doing, whether singly or in concert, any of the following acts:' and there follows a series of so-called acts which embrace all of the 'acts' which the injunction restrains."

Of course, one of said acts specifically enumerated in Section 104 is withdrawal from service, singly or in concert.

In *Wilson & Co. v. Birl* (CA3), 105 F2d 948, the court said:

> "Sec. 4 of the Act, 29 U.S.C.A., Sec. 104, enumerates certain acts not subject to injunctive relief . . ."

It referred to them, which includes striking, then declared:

> "A strike, therefore, cannot be enjoined."

Again the court said:

> "We are of the opinion that Federal Courts may no longer issue general injunctions against striking, but only to restrain specific acts of individuals, which we shall presently discuss."

Another case, similar to the preceding one, is *M. I. Mead, Inc. v. International Brotherhood,* (CA1) 217 F2d 6,

in which the employer sought an injunction against a strike and also picketing. No violence was involved. The District Court refused it and the Court of Appeals affirmed, holding that this same Section 104 deprives a federal court from granting an injunction against the several acts, including striking, where a labor dispute is involved.

No case involving an attempt by an employer to enjoin a strike itself has reached this court since the enactment of the Norris-LaGuardia Act, as far as we have discovered. However, one involving the enjoining of picketing has. In *New Negro Alliance v. Sanitary Grocery Co.*, 303 US 552, 82 L ed 1012, 58 S Ct 270, the Court of Appeals for the District of Columbia affirmed the grant of injunction by the management of several stores against picketing of them in a controversy over the non-employment of Negro workers. This court, however reversed and held that a labor dispute was involved, as is defined by the Norris-LaGuardia Act. Then with reference to those acts enumerated in Section 104, which includes striking, it made this pronouncement:

> "The purpose and policy of the Act respecting the jurisdiction of the federal courts is set forth in Sections 4 and 7 [104 and 107]. The former deprives those courts of jurisdiction to issue an injunction against, inter alia, giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence . . . "

It held that the Norris- LaGuardia Act prevented such an injunction. Certainly, then, any other of the acts enumerated in that same section is afforded similar protection from injunction in a labor dispute.

That the Norris-LaGuardia Act applies to railway labor disputes is apparent from *Brotherhood of Railroad Trainmen v. Toledo, Peoria & Western Ry. Co.*, 321 US 50, 88 L ed

534, 64 S Ct 413. It says so. Also, footnote 13 of the opinion refers to legislative history to that effect. There, as here, the railway carrier sought an injunction, but in that case it realized that the strike itself was not enjoinable because of Section 104 of the Norris-LaGuardia Act. The injunction sought was against the interfering by violence or threat of violence with the railroad's property and interstate operations. There, interruption of interstate commerce was likewise threatened, contrary to the general purpose of the Railway Labor Act. But there the carrier had not complied with "every reasonable effort to settle such dispute" as is required by another provision of the same Norris-LaGuardia Act—Section 108—because it had refused to arbitrate the dispute. Accordingly, this court denied the injunction.

Thus where the strike is accompanied by violence or fraud, and the injunction is to restrain the violence or fraud—not the strike itself—to obtain such an injunction the complainant must meet the *other* conditions of the Act, to-wit, Sections 107, 108, and 109, which will be treated presently because of their being violated also.

But, as here, where a strike is involved in a labor dispute and an injunction is sought in a federal court against the *strike itself*, a complete defense is made out by Section 104 of the Norris-LaGuardia Act.

Petitioner's Cases Are Not In Point

Petitioner takes the position on page 28 of its brief that the Norris-LaGuardia Act does not prohibit a federal court from granting an injunction against a threatened strike over a dispute pending before the National Railroad Adjustment Board and of which that board has jurisdiction.[4]

4. Of course, as already pointed out, the assumption of jurisdiction is completely unfounded. The dispute was actually being mediated by the National Mediation Board over the respondents' employees' Section 6 notice under the Railway Labor Act for a change in contract rule and the carrier's defensive contention of permanency of the Cheney Arbitration Award. Its submission to the Adjustment Board was clearly to the wrong board.

In support of that position the petitioner relies upon a number of authorities. Yet not a single one of them except the *Chicago River & Indiana R. Co.* case (also now here on certiorari) involves an injunction which was granted in a labor dispute against a strike or any other of the acts insulated by Section 104 of the Norris-LaGuardia Act against injunction.

In *Switchmen's Union of North America v. National Mediation Board*, 320 US 297, 88 L ed 61, 64 S Ct 95, this court had before it a prayer for declaratory judgment relating to the determination by the National Mediation Board as to the choosing of a collective bargaining representative, not a strike.

In *Virginian Railroad v. System Federation*, 300 US 515, 81 L ed 789, 57 S Ct 592, there was an injunction against the carrier's refusal to treat with and recognize the employees' union, here again nothing whatever relating to a strike or any other act insulated by Section 104 of the Norris-LaGuardia Act.

In *Order of Railway Conductors v. Pitney*, 326 US 561, 90 L ed 318, 66 S Ct 322, there was not a grant of any injunction at all, but a denial of one for failure of the complainant to exhaust its administrative remedies. The court stayed dismissal of the action until resort could be made to the Adjustment Board. This is another illustration of a situation where no act was protected by Section 104.

In *Graham v. Brotherhood of Locomotive Firemen and Enginemen*, 338 U S 232, 96 L ed 1283, 72 S Ct 1022, an injunction was granted, not against a strike or other act covered by Section 104, but against the craft representative's failure to represent all without hostile discrimination, and hence the Norris-LaGuardia Act was no bar to the relief sought there.

The *Steele* and *Tunstall* cases, cited by the *Graham* decision and found in the footnote of petitioner's brief, are identical with it on this score.

In *Texas and New Orleans Railroad Co. v. Brotherhood of Railway and Steamship Clerks,* 281 US 548, 74 L ed 1034, 50 S Ct 427, the injunction was against the railroad's interference, influence, and coercing of employees in the designation of their representative under the Railway Labor Act, not a strike or the like. The Norris-LaGuardia Act had not even been passed at that time—1930. Hence, that case can have no possible application to this question here.

In *Brotherhood of Railroad Trainmen v. Howard,* 348 US 768, 96 L ed 1283, 72 S Ct 1022, there was another injunction granted against certain employees' claim of racial discrimination against them by a craft representative. Here again, nothing in Section 104 relates to that, so the Norris-LaGuardia Act was no barrier to the relief sought in that instance.

In *New York Central Ry. Co. v. Brotherhood of Railroad Trainmen,* 140 Fed. Supp. 273 the court enjoined a a strike over closing a railroad yard. But the significance here is that the court held that there was no *labor dispute* involved to make applicable the protection of this Norris-LaGuardia Act. The prohibition against strikes under that act is in those situations where there is a labor dispute. Admittedly, in the case at bar there was one.

In *Railroad Yardmasters Of America v. Pennsylvania Ry. Co.,* (CA3) 224 F2d 226, the court enjoined an imminent change in the collective agreement contrary to the Railway Labor Act; and here again was the absence of a strike or any other act enumerated in Section 104.

In *Brotherhood of Railway and S. S. Clerks v. Atlantic Coast Line Ry Co.,* (CA4) 201 F2d 36, the injunction

ran to compel the carrier to bargain in good faith, as in the *Virginian Ry.* case, supra. It is still another example of nothing inhibited by the same Section 104.

In *Rolfes v. Dwellingham,* (CA8), 198 F2d 591, the injunction was granted to employees against the enforcement of an Adjustment Board Award without giving the required statutory notice for 30 days intended change in agreements. No strike or other activity exempted by Section 104 was in the factual picture.

In *Missouri, Kansas, Texas Ry. v. Brotherhood of S. S. Clerks,* (CA7) 188 F2d 302, was another instance of injunction granted because of failure to give the required notice relating to an Adjustment Board award, not covered by Section 104.

Continuing, and referring to the petitioner's next reference to the Norris-LaGuardia Act (which appears in footnote 7, page 36 of its brief), in *Textile Workers Union of America v Alco Manufacturing Co.,* 94 Fed. Supp. 626, the Court granted an injunction requiring the employer to comply with a collective agreement, still a conspicious absence of any of the acts listed under Section 104.

In *United States v. B. L. E.,* 79 F Supp 485, cert. den. 335 US 867, 93 L ed 412, 69 S Ct 137, the court granted an injunction sought by the United States Government against a strike because there the government itself was operating the business and of course was not subject to the Norris-LaGuardia Act so as to be a party to a labor dispute.

In *Railway Employees' Co-Op Association v. A. B. & C. Ry. Co.,* 22 F Supp. 510, there was an injunction against the carrier's change of agreement while mediation was in progress and without the required 30 days statutory notice, instead of any strike or other activity embraced in Section 104.

Reverting to the text of the brief itself, the next case relied upon is *Elgin etc v. Burley,* 325 US 711, 89 L ed 1886, 65 S

Ct. 1282, which did not even involve an injunction. It was an action for damages, and has no relationship at all to the question at bar.

In *Local* 19, *Warehouse, etc. v. Buckeye Cotton Oil Co.* (CA6), 236 F2d 776, the injunction was to compel arbitration of a dispute concerning a contract, still another different situation from where an injunction was sought against a strike or any of those acts spelled out as injunction free by the Norris-LaGuardia Act.

We leave *the Chicago River* grievance case, cited next in petitioner's list of authorities, for those who are arguing it here on certiorari at this same time.

The final case thus relied upon, *Cook County National Bank v. United States*, 107 US 445, 27 L ed 537, 2 S Ct 561, deals not with the Norris-LaGuardia Act, but with banking statutes, and a reading of it makes clear what petitioner's quotation from it infers, that it was dealing with the doctrine of *implied* repeal, the very position from which petitioner here in this court has shied away.

Thus, the petitioner here cannot derive any support whatever from any of those cases as authority for its position here that in the face of the Norris-LaGuardia Act, a federal court may enjoin a strike itself, which is unaccompanied by any violence, in a labor dispute.

If the strike had taken place and violence had developed in the case at bar, the injunctive arm of the court could have reached the violence, but not the strike itself. But the court below is correct in stating that petitioner's complaint carefully refrained from alleging threatened or imminent acts of violence. Section 107 (a) of the same Act requires a finding of such unlawful acts, as we shall discuss presently. It seems to us that for that reason alone; viz, the enjoining of a strike

itself, that petitioner's complaint would not lie and that no injunction should have issued. The Norris-LaGuardia Act's Section 104 prevents federal courts from enjoining strikes in *all* kinds of labor disputes. It has no provision excepting railway labor disputes.

2. The Findings Were Not Made And Filed Prior To Issuance Of The Injunction

The injunctive order violated the provisions of Section 109[5] requiring findings to be signed and filed by the court before an injunction can issue. There is no denial whatever of this. In this case the record shows that the findings of fact, conclusions of law and judgment granting the preliminary injunction were incorporated in the *same* document dated March 10, 1955 and marked filed March 11, 1955 (R. 219-240). This is still another independent violation.

3. No Unlawful Acts Were Involved And No Inadequate Police Protection Was Shown

Both of these are violations of Section 107[6] of the Norris-LaGuardia Act and will be treated together in that order.

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5. Section 109 provides: "No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; . . ."

6. Section 107 provides: "No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in this chapter, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof; . . .

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection."

First, it will be observed that no violence of any type or degree was attempted to be alleged in the complaint. There was no evidence whatever of any violence. Neither finding number 33 referring to the degree of damage depending on the destruction and violence of the strike, nor 34 dealing with the Carrier's being threatened with unlawful acts by respondents so as to result in damage to petitioner's property, measure up to the requirement of physical violence being threatened and would be continued unless enjoined. The Court of Appeals evaluated these findings and so held.

Petitioner claims that the strike would constitute a breach of contract (Cheney Award) and that the refusal to stand by while petitioner invoked the jurisdiction of the Adjustment Board amounted to this statutory violation. We submit that neither of these things constitutes the required "unlawful acts."

Courts have repeatedly held that the "unlawful acts" referred to are acts of violence. As was stated in *Wilson v. Birl* (CA3) 105 F2d 948,

> "Irreparable injury to the complainant's property, which has no police protection, is an essential averment and finding; and the 'unlawful acts' do not constitute a general reference to anything that may be considered illegal, but specifically to the acts of violence which the authority of the executive is calculated to control."

And further that court said:

> "Whether or not the strike in this case is illegal, because of its purpose, as argued by appellant, is beside the point. The test is no longer given the uncertain elasticity of 'illegality.'"

In this record there is nothing whatever to indicate any threat to any damage to person or property. There was no disorder whatever.

Thus, there were no unlawful acts alleged, proved, or found, as is required.

The other violation of Section 107, the failure to allege, produce evidence as to, and make findings that public officers "are unable or unwilling to furnish adequate protection," is equally as obvious. Since there was no violence, there was no need for any police protection. None whatever was sought. Again, the Court of Appeals here found this requirement was not met.

In *Wilson & Co. v. Birl,* (CA3), 105 F2d 948, already cited, where a strike was involved, in addition to other reasons why the injunction should be refused on account of the Norris-LaGuardia Act, the Court reviewed the record as to police protection. It referred to this particular requirement and stated that "on this ground alone the injunction could have been refused."

The importance with compliance with it is emphasized in *Carter v. Herrin Motor Freight Lines,* (CA5), 131 F2d 557, supra, in these words:

> " . . . unless the local authorities whose duty it is to keep the peace have first been resorted to, and have either advised that they could not or would not keep it, or advising they could and would, have failed through inability or unwillingness to do so. It is, therefore, of the very essence of the right to apply for injunctive relief in a federal court that the statutory allegation be made and definitely proven."

Additional decisions on the subject are *Greene v. Obgefell* (CADC) 121 F2d 46, (cert. den. 314 US 637, 86 L ed 511, 62 S Ct 72), and *Donnelly Garment Co. v. Dubinsky,* (CA8) 154 F2d 38.

Thus, for either of these two failures to comply with the requirements of Section 107 of the Norris-LaGuardia Act, the complaint should have been dismissed and the injunction

denied. The Court of Appeals' views as to both of them were correct.

Violation Of Another Statute Is Immaterial Here

Petitioner's contention here is that the Norris-LaGuardia Act does not apply because the threatened strike would violate the Railway Labor Act.[7] It says that to strike while it has submitted a dispute to the Adjustment Board is contrary to the act. We deny that there is any such violation and we shall demonstrate that there is none in the next point.

The Norris-LaGuardia Act denies jurisdiction to federal courts to enjoin any strike in a labor dispute, regardless of whether its purpose or effect is legal or illegal.

In *Milk Wagon Drivers Union, Local No. 753, et al. vs. Lake Valley Farm Products, Inc.*, 311 US 91, 85 L ed 63, 61 S Ct 122, the employer sought an injunction to prevent an attempt by the labor organization to unionize certain individuals. The employer contended that the picketing activities in that attempt violated the Sherman Anti-Trust Act and that, therefore, regardless of the Norris-LaGuardia Act the court could enjoin the picketing (an act prohibited from injunction under Section 104 of that Act). This court held:

> "For us to hold, in the face of this legislation, that the federal courts have jurisdiction growing out of labor disputes, merely because alleged violations of the Sherman Act are involved, would run counter to the plain mandate of the Act and would reverse the declared purpose of Congress."

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7. In the lower court one of the petitioner's contentions was that the strike would have violated the Cheney Arbitration Award. But now it apparently recognizes the futility of such an argument. For the courts have held uniformly that the mere fact that the strike would have for its purpose or effect the violation of a contract is no excuse to disobey the prohibition of Section 104 of the Norris-LaGuardia Act. *In Re Third Avenue Transit Corp.* (CA2), 192 F2d 971; *Alcoa S. S. Co. v. McMahon*, (CA2), 173 F2d 567 (Cert. Den 338 US 821, 94 L ed 498, 70 S Ct 65) and others.

It ordered the complaint dismissed.

Other authorities to the effect that the protection of the Norris-LaGuardia Act avails regardless of violation of another statute are *Wilson & Co., v. Birl,* (CA3), 105 F2d, 948, already quoted from, *East Texas Motor Freight Lines v. Teamsters,* (CA5), 163 F2d 10, dealing with an alleged violation of the Motor Carriers' Act (49 USC Sec. 301 et seq.) and *Lee Way Motor Freight v. Keystone Freight Lines,* (CA10), 126 F2d 931, (Cert. Den. 317 US 645, 87 L ed 519, 63 S Ct 37), stressing that the act "does not concern itself with the background or motives of the strike."

Further, petitioner refers to judicial references relating to the "sacrifice or obliteration of rights" such as is found in *Order of Railway Conductors v. Pitney,* 326 US 561, 90 L ed 318, 66 S Ct 322; *Switchmen's Union of North America v. National Mediation Board,* 320 US 297, 88 L Ed 61, 64 S Ct 95 as well as in *Graham v. B.L.F.&E.,* 338 US 232, 94 L ed 22, 70 S Ct 14, and the *Steele* and *Tunstal* cases which the latter cites. By its own diverting action in the direction of the Adjustment Board, petitioner seeks to conceal the fact that it is trying to "sacrifice and obliterate" the rights of its own employees to negotiate and to strive for new rules, rates of pay and working conditions. If "sacrifice and obliteration of rights" is to be avoided in this case, it can be accomplished only by approving the dismissal of petitioner's complaint.

Petitioner's argument makes one more set of false assumptions. It assumes that since *Slocum v. D.L.& W. Ry.,* 339 US 239, 94 L ed 795, 70 S Ct 577 and *Order of Railway Conductors of America v. Southern Ry. Co.,* 339 US 255, 94 L ed 811, 70 S Ct 585 deny the rights of courts to make certain decisions they likewise deny to employees the right of self-help. It falsely assumes that the court has jurisdiction to enjoin a threatened strike. It erroneously assumes that a court can issue an injunction in a labor dispute notwithstanding the findings required by Sections 107, 108, and 109 of the Norris- La-

Guardia Act have not been made, (29 USC 107, 108, and 109).

Respondent therefore submits there is no escape from the conclusion that the injunction collided with the Norris-LaGuardia Act and should never have been issued at all. In apparent realization of this, Petitioner has now turned to avoid the Act altogether, either by repeal by implication or a holding of inapplicability to the facts of the case as it sees them.

POINT TWO. THE RAILWAY LABOR ACT AS AMENDED DID NOT REPEAL THE NORRIS-LaGUARDIA ACT

Repeal By Implication Is Not Favored

Of course the Railway Labor Act by its 1934 amendments did not specifically repeal any part of the Norris-LaGuardia Act. Petitioner is unable to point to any provision in it that in terms repeals it. Whatever argument is made that the latter Act was so changed must depend upon the doctrine of implied repeal. But as has been stated by numerous courts, repeals by implication are not favored, and such repeal of so recent and important a matter would hardly have been left by Congress to implication, but would have been specifically provided if intended.

In *Mead v. International Brotherhood of Teamsters*, (CA1), 217 F2d 6, the court had before it the question as to whether there had been a repeal by implication of the Norris-LaGuardia Act by the Labor Management Relations Act. The court pointed out that repeals by implication are not favored, especially when

> " . . . the earlier enactment is a significant and tremendously important piece of legislation which the Congress evidently had specifically in mind when it came to enact the Labor Management Relations Act in 1947."

In the *Mead* case fifteen years had elapsed after the enactment of the Norris-LaGuardia Act when the Labor Management

Relations Act was adopted. In the case at bar it was but two years when the 1934 amendments to the Railway Labor Act became law .The significant and tremendously important aspect of the Norris-LaGuardia Act which petitioner seeks to repeal or avoid is reflected in its very great and progressive purpose of freeing strikes from elimination by injunctions. As this court stated in *Brotherhood of Railroad Trainmen v. Toledo, Peoria & Western Ry. Co.*, 321 US 50, 88 L ed 534, 64 S Ct 413,

> "But one major purpose of the Act was to prevent the use of injunction improperly as a strike breaking implement."

That case involved a dispute under the Railway Labor Act, and the court applied the Norris-LaGuardia Act to deny the injunction because the conditions in Section 108[8] of the Act had not been met. The vacated injunction was against acts of violence, and the court particularly applied that part of Section 108 of the 1932 Act which required every reasonable use to be made of all available machinery, in that case voluntary arbitration. The court's opinion positively reflects the continued existence and applicability of the Norris-LaGuardia act in railroad labor cases.

The Right To Strike Was Continued In The 1934 Amendments

It is important to remember that the 1934 amendments of the Railway Labor Act, aside from making more specific guarantees for freedom of choosing representatives under Section 2, (not involved in this case), sought to produce only certain procedural changes. Those were: (1) compulsory establishment of National Adjustment Boards and (2) pre-

8. Section 108 provides: "No restraining order or injunctive relief shall be granted to any complaintant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration."

vention of deadlocks by a neutral. Six years before the enactment of the Norris-LaGuardia Act the original Railway Labor Act was adopted and by it Congress clearly intended to preserve the right to strike.

At that time the right to strike was fully recognized. *American Steel Foundries v. Tri-City Central Trades Council*, 257 US 184, 66 L ed 189, 42 S Ct 72, opinion by Chief Justice Taft. There was nothing in the 1926 Railway Labor Act which militated against this right. Actually, in each of the three instances where the question of the right to strike arose in the 1926 Congressional Committee hearings on the original Railway Labor Act quite positive statements were made to show that such right to strike was preserved. (Senate Committee Hearings on S. 2306, pp. 15-17, p. 25 and pp. 151-152.)

The 1934 Amendments did not seek in any way to change this. As will appear later, the 1934 Congressional Committee hearings recognize the binding character of Adjustment Board Awards where one could be obtained under the original Act; and the 1934 amendments merely sought to produce more awards with the same binding character. We submit an increase in the number of awards constitutes no denial of the right to strike and no enlargement of the jurisdiction of the courts to enjoin strikes at any time. It is very hard for us to understand how the 1934 amendments of the Railway Labor Act could be said to have struck down the 1932 Norris-LaGuardia Act when it contains nothing at all which departs from the 1926 Act's preservation of the right to strike.

The discussion of strikes was concerning the enforcement of awards only. It is significant that the subject of strikes was not mentioned in those proceedings any more than it was.

But, even if the present case were to be classified as one involving a mere grievance dispute, the important factor here is that the discussion on that occasion dealt with the question of whether a strike would be permitted *after* the

Adjustment Board had made an award *adverse* to the employees on such a grievance dispute submission.

This Was No Grievance

Petitioner's misconception as to the type of dispute involved in this case is of great significance here. For in dealing with the question of whether Congress by the 1934 amendments to the Railway Labor Act made the submission of grievances to the Adjustment Board the exclusive remedy for their handling, thus outlawing the right to strike over them during the pendency of such submission, it is important to identify the dispute. Petitioner continues throughout its brief to classify it as a mere grievance dispute. Its references to and quotations from the legislative history of such 1934 amendments are replete with and relate only to grievances, and therefore the inferences and conclusions which it attempts to pull from them do not apply to the dispute which is actually involved here.

Indeed, the controversy between the petitioner and the respondents cannot in any way be classified as a mere grievance dispute. It was about to produce a strike and the carrier realized this by enjoining it. Its consequences, as to interruption of interstate commerce and the like, the petitioner was careful to labor in its complaint. That dispute was brought on by the employees' demand for a contract rule change under Section 6 of the Railway Labor Act. As an argument against the pay increase sought the carrier defended by contending that the terms of the Cheney Award precluded the wage demand. The parties recognized the grave character and magnitude of the dispute by participating in mediation. It is undisputed that the National Mediation Board still had jurisdiction of that dispute when the carrier filed this suit.

Railroad Men Know The Right To Strike Still Exists

But there is a more recent chapter in this legislative history. That the 1934 amendments to the Railway Labor Act did not

make it unlawful to strike during submission of any dispute to the Adjustment Board is quite apparent from recent legislative history. We refer to what is known as the Donnell bill, which was introduced in the United States Senate in 1950. It was entitled "A bill to Amend the Railway Labor Act, as amended, so as to prevent interference with the movement of interstate commerce and for other purposes." It contained the following provision:

> "Section 10 (A). First. Any strike, including any concerted stoppage of work by employees or any concerted slow-down, sit-down, walk-out, or other concerted interruption of operations by employees, or any lockout by a carrier, arising out of or in connection with any dispute falling within the purview of this Act, shall be unlawful."

So in 1950, 16 years after the 1934 amendments were considered, Congress had before it a proposal which would have made it unlawful for railway employees to strike. But the bill did not even receive a favorable committee report and never reached the floor of the Senate.

Extensive hearings were held, at which representatives from both railway management and labor expressed their views as to the effect of existing 1934 amendments which are now under consideration in this case. (Senate Subcommittee of Com. on Labor and Public Welfare, 81st Congress, Hearings on S. 3463.)

The same Mr. Harrison, labor's representative in the 1934 hearings from whom petitioner here seeks to draw inferences favorable to it, testified as follows:

> "MR. HARRISON. Now why do I reason it out that way? You see, under the present law, if we have a complaint against a railroad company that one of our contracts has been violated, that we cannot settle after a conference with railway management, we may, at our own election, take that dispute to the Railroad Adjust-

ment Board for decision, or we may strike if we want to under the present law." (p. 205)

Spokesman for railroad management testified in a similar manner. Mr. Loomis among other things said this:

"I should make it clear that the cases which are referable to the National Railroad Adjustment Board are not cases where either side is seeking to change an agreement or to secure different wages, rules or working conditions. These cases only involve the proper interpretation of the contracts in effect or a grievance arising under said contract. There is no excuse for a strike in any of these cases. * * * The parties can submit the question to the National Railroad Adjustment Board; they can arbitrate it under the provisions of the Railway Labor Act; they can agree to set up a special Adjustment Board on the particular property to dispose of such disputes. Surely a strike should not be called because of the failure of the parties to agree on a proper interpretation of a contract when the law provides means for securing a binding interpretation.

S. 3463 would outlaw strikes in these types of cases and we are heartily in accord with the view that such strikes should be outlawed." (p. 86) (Emphasis Supplied)

Another representative of railway management, J. Carter Fort, expressed it this way:

"As to disputes concerning the interpretation of agreements, the present law does afford an opportunity for employees to obtain final and enforceable decisions through the machinery of the National Railroad Adjustment Board set up under the provisions of the amendments of 1934. However, the law does not require that employees take such disputes to the Adjustment Board, or abide by the decisions of the Board. And it does not forbid strikes in connection with disputes falling within the jurisdiction of the Adjustment Board, and there have been many strikes of that kind." (p. 13)

Thus, these were expressions from railroad men who know what the Railway Labor Act as amended in 1934 means. More appears in the appendix to this brief. These were their practical constructions placed upon the very legislation which petitioner now employs in its efforts to sustain this injunction against the strike threatened here.

The proceedings on the Donnell bill should forever put to rest petitioner's contention.

Recent Decisions Do Not Support Any Such Repeal

As a matter of fact, petitioner's argument in the court below was chiefly on the point that the Norris-LaGuardia Act did not prohibit the injunction because of a claimed illegal breach of contract and some sort of violation of the sections of the Railway Labor Act providing for the Adjustment Board's jurisdiction. These points are not predicated upon any repeal of the Norris-LaGuardia Act. In addition, the dissenting judge in the court below, whose opinion petitioner now so ardently espouses, admitted that there had been no repeal of the Norris-LaGuardia Act.

The Congressional purpose of the Railway Labor Act was clearly stated in *Washington Terminal v. Boswell* (CADC), 124 F2d 235, aff. 319 US 732, 87 L ed 1694, 63 S Ct 1430, as follows:

> "The Railway Labor Act was designed, not to outlaw the right to strike, but merely to prevent the necessity for its exercise."

Certainly the 1934 amendments intended no change whatever in strike policy. The country had not at that time been troubled with excessive strikes. Railroad strikes had been very infrequent indeed. As appears in footnote 7, page 553 in *Vir-*

ginian Railroad v. System Federation, 300 US 515, 81 L ed 789, 57 S Ct 592, (1937):

> "There was evidence available to Congress that the labor policy embodied in the Railway Labor Act had been successful in curbing strikes. In the eight years subsequent to the passage of the 1926 Act, there were only two small railroad strikes. Since the 1934 Amendment there has been but one."

All this being true, it is erroneous to attribute to Congress any intent to strike down or limit or to render inapplicable the Norris-LaGuardia bar against the use of injunctions in Labor disputes. The District Court's injunction in the instant case certainly proscribed the use of self-help and was at total variance with the design of the Act and the intent of the 1934 amendments.

POINT THREE. THE 1934 AMENDMENTS DO NOT AUTHORIZE INJUNCTIONS

In view of what has already been presented, we feel that it has been demonstrated that in 1934 Congress did not outlaw strikes. That alone should be decisive of this case.

But another approach is that it is certainly clear that the 1934 amendments to the Railway Labor Act do not specifically authorize the use of injunctions. Nor does the legislative history of that amendment reflect any intention of increasing the use of injunctions in labor disputes.

Petitioner's effort to support its position with quotations from the Congressional Committee hearings is not justified. Such quotations are taken out of context and do not reveal the true intention of the language used.

The conditions which the 1934 amendments were intended to correct were the existence of adjustment boards on only 60 railroads, and the inability of getting decisions in the face of the very extensive practice of creating deadlocks with no

means for resolving them. The sole employment of compulsion by the amendments is with respect to the establishment of the National Board and to the appointment of referees to *dissolve all deadlocks.*

Moreover the procedural changes effected by the 1934 amendments did not in any manner apply to contract negotiation procedures. The case at bar involves a demand which at its inception was one for a new contract rule. It was one which at all times thereafter continued as a contract demand until petitioner belatedly (and we submit erroneously) sought to convert it into one for the Adjustment Board. There is nothing in the 1934 amendments changing the contract negotiation procedures of the original act. There was therefore no change at all which could affect the case at bar.

But even if the case were to be treated as one for a grievance or one of contract interpretation, as petitioner contends, the committee hearings reveal no support for compulsory *submission of* grievances or contract interpretation to the Adjustment Board; and of course the language in the amendments as adopted is clearly permissive. Nor do the committee hearings or the amendments reveal a single intention to prevent strikes with respect to anything concerning either grievances or contract negotiating processes.

In the Senate Committee hearings, p. 33, Mr. Harrison referred to conditions of unrest due to deadlocked cases and interruptions to service which the Act intended to *minimize*—not prohibit. At page 35, he referred to *compulsory determination* of grievances—not compulsory submission of them to the Board.

In the House Committee hearings, Commissioner Eastman, in discussing the situation of deadlocked cases, spoke of the National Board as a place to which grievances "may be referred." At page 59, Mr. Eastman stated that it was his understanding that a strike could not be called *after* an award had been made. At page 61, he expressed a personal opinion that

strikes ought not be called at all with reference to grievances, but he is not then purporting to interpret or construe any proposal which was before the committee. At page 63, Mr. Carmalt thought that an injunction would lie against a strike growing out of the *settlement* of grievances under Section 3 of the bill under consideration.

The 1926 Act certainly at no time required the submission of grievances to any board or forbade strikes with respect to any disputes, grievances or otherwise. It sought merely to minimize them. The 1934 proposal did not intend to make any changes in this regard. It sought only to establish a National Board and to provide a method for breaking deadlocks. The 1934 amendments were never intended to be a general revision or overhaul of the original Act. The 1926 Act was deemed by all to be satisfactory except for corrections needed in two or three respects; and these corrections did not include compulsion as to submission of grievances or contract interpretations, or the denial of the right to strike.

In fact this court stated in *Moore v. Illinois Central*, 312 US 630, 85 L ed 1089, 61 S Ct 754, that:

> ". . . neither the original 1926 Act, nor the Act as amended in 1934, indicates that the machinery provided for settling disputes was based on a philosophy of legal compulsion. On the contrary, the legislative history of the Railway Labor Act shows a consistent purpose on the part of Congress to establish and maintain a system for peaceful adjustment and mediation voluntary in its nature."

This statement was made in a case involving an individual's claim for wrongful discharge.[9]

9. The subsequent opinions in *Order of Railroad Conductors v. Pitney*, 326 US 561, 90 L ed 318, 66 S Ct 322, and *Slocum v. Delaware L. &W. Ry Co.*, 339 US 239, 94 L ed 759, 70 S Ct 577, are consistent with the *Moore*, supra, holding. They show that resort to the Board is not mandatory or exclusive in the handling of such disputes, but is an administrative remedy that a complaining party must first exhaust, before he seeks court action, where an interpretation or application of a railway collective agreement is involved.

We submit that the suggestion made in the dissenting opinion in the lower court that two or more statutes should be "accommodated and adapted" to effect the total policy reflected by all constitutes a suggestion for judicial legislation. Two statutes should of course be interpreted harmoniously, but when one or the other must be "accommodated and adapted" in order to do so legislative changes are being made which ought never be made unless necessary and clearly intended by the acts themselves. Certainly the principle of *accommodation and adaptation* ought not be employed to alter either the effect or application of so important a law as the Norris-LaGuardia Act.

There Is No Express Provision In The Act

Further, were there to be read into the 1934 Act a provision for judicial intervention in the manner petitioner desires, it would be necessary to reverse or ignore the pronouncement of this court in *General Committee of Adjustment v Missouri-Kansas-Texas Ry. Co.* 320 US 323, 88 L ed 76, 64 S Ct 146, declaring that

> "The inference is strong that Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicated."

It is significant that this important decision was not mentioned either in the dissenting opinion in the court below or in the opinion of the court in *Chicago River and Indiana Ry. Co. v. Brotherhood of Railroad Trainmen,* 229 F2d 926.

Without laboring the matter further, and without intending to suggest any controlling significance in any of the discussions appearing therein, the appendix to this brief quotes fairly ex-

tended conversations from the committee hearings. In this way the correctness of the statements made herein and the self-serving use of quotations made by petitioner will be apparent. In the final analysis, nowhere in the Railway Labor Act, as thus amended, is there any provision authorizing an injunction in a situation such as here.

POINT FOUR. THE INJUNCTION VIOLATED THE PURPOSES OF BOTH THE RAILWAY LABOR ACT AND THE NORRIS-LaGUARDIA ACT

Another Reason For Affirmance

In the present case the injunction violated the purposes of both the Railway Labor Act and the Norris-LaGuardia Act; and for this reason the Court of Appeals decision should stand, though this was not a ground stressed by the court below.

The Railway Labor Act in pursuit of industrial peace requires collective bargaining. The Norris-LaGuardia Act supports this policy. See Section 2, where freedom of the employee to "negotiate the terms and conditions of . . . employment," is provided for.

The respondents sought to negotiate, litigated and mediated for 14 months; and petitioner then finally sought to derail the dispute by shunting it into the Adjustment Board. We submit that such effort on the part of petitioner constitutes a misuse of the processes of the Railway Labor Act. The jurisdiction of the Adjustment Board was never intended by Congress to be a device for thwarting the contract negotiating process.

It cannot be disputed that in contract negotiations Congress intended to preserve the right to strike, seeking only to delay the same and hoping that a settlement may be reached in the interim. Congress never intended the availabilty of any board

as a means of denying the right to strike which was so carefully preserved. In fact, Congress never intended to deny the right to strike in any dispute at all. Congress knew the ever changing character of railroad employment, the non-static character of its status and of its wages and working conditions. It is inconceivable that the rule made applicable by the Cheney Award would be considered as forever permanent by anyone.

It is therefore clear that the injunction, for this additional reason, ran counter to the purposes of both of these important laws.

E. CONCLUSION

Wherefore respondents respectfully submit that the court below correctly ruled that the injunction was issued in violation of the Norris-LaGuardia Act, and properly directed the dismissal of the suit. Any other conclusion would damage the collective bargaining process which is of the very essence of our national industrial economy.

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Certificate Of Service

I, Benning M. Grice, of counsel for respondents in the foregoing case, certify that I have on this date, prior to filing, served a copy of the within brief upon each of the counsel for petitioner, by first class mail with proper postage affixed thereto to their office addresses.

This January 24th, 1957.

BENNING M. GRICE

APPENDIX—EXTRACTS FROM LEGISLATIVE HISTORY OF RAILWAY LABOR ACT

PART ONE

This portion deals with the 1934 Amendments.

Hearings were held before the Senate Committee on Interstate Commerce of the 73rd Congress. The House Committee on Interstate and Foreign Commerce considered a similar bill. The overall problems and proposed corrective measures were explained by the principal draftsman of the bill, Federal Coordinator of Transportation, Joseph B. Eastman. Management's chief spokesman was M. W. Clement. George M. Harrison spoke for the 21 major railway Brotherhoods. After favorable Committee reports, these bills were debated on the floors, and house bill 9861 was passed on June 18, 1934, to become the amendments to the 1926 Act.

I. The 1926 Act had served well and the 1934 changes did not alter its basic principles. In the Senate hearings all agreed upon that.

Commissioner Eastman said that the 1926 Act had been tried for almost eight years, that it had "served a very useful purpose and has brought about many good results, but experience has shown that it is in need of improvement;" that the proposed bill contains such improvements, but "does not depart from the general principles of the present Railway Labor Act, but instead, is designed to re-inforce its principles and provide for their more effective application. It seeks not to overturn but to perfect what has been done." (Senate Hearings, p. 10). Likewise, Mr. Harrison stated that the proposed bill was designed "to maintain substantially the same method" of the 1926 Act "for the adjustment of labor relations," that while the 1926 act's "principles are sound, there is need of some amendments . . . " (Senate hearings, p. 28). Mr. Clement stated that the 1926 Act had "functioned effectively

for eight years," but pointed out that there were two defects which should be corrected. (Senate hearings, p. 55). The Chairman of the United States Board of Mediation, Samuel E. Winslow, recited the legislative history of the 1926 Act, stating that it had needed only two changes, (Senate hearings, p. 136).

The Senate Report was to the same effect (No. 1065 on S. 3266).

In the House hearings the views were the same. (House Hearings, Statements of Mr. Eastman, p. 16; Mr. Harrison, p. 78; Mr. Clement, p. 123). His later words summed up, "The Railway Labor Act of 1926 with certain modifications, is nearly a perfect bill for the settlement of major troubles between men and management." p. 139.

II. The Major Changes Related Only To Employee Representation and Adjustment Boards

The employee representation phase relates to Section 2 of the Act and does not concern us here. It is the Adjustment Board changes which are pertinent.

Before the Senate and House Committees all agreed that the defects were (1) prevailing *failure* of management and labor *to agree to establish Adjustment Boards*, and (2) *failure* of those which had been established *to reach decisions* because of *deadlocks*.

Mr. Eastman recited the history of Adjustment Boards and described the situation accurately:

"Because of the lack of adjustment boards in many situations and the tendency of those which do exist to deadlock, very disturbing conditions have at times been created . . . The bill before you, S 3266, attempts to remedy both of these deficiencies in the present law. It provides for the creation of

a National Adjustment Board . . . Please note that disputes concerning changes in rates of pay, rules, or working conditions may not be so referred, but are to be handled, when unadjusted, through the process of mediation." (Senate Hearings, p. 17.)

Mr. Harrison deplored the lack of establishment of adjustment boards. As to the proposed bill he said:

> "The language suggests first, that there shall be a National Adjustment Board established; that means it is mandatory and must be set up." (Senate Hearings, p. 30.)

As to deadlocks, he remarked that the new law would provide for the appointment of a neutral, if necessary, so that a decision would be reached, (Senate Hearings, p. 32).

Mr. Clement, for the railroads, agreed that decisions must be forthcoming, (Senate Hearings, p. 69).

Mediation Chairman Winslow stated that one of the two needs was "getting an arrangement for the operation of adjustment boards, so that you will get decisions. And by that I mean decisions. The failure of adjustment boards to decide has bedeviled this work . . . " In answer to a question whether "there must be some compulsory system to actually create boards that can arrive at a decision," he said, "not only can, but must." (Senate Hearings, p. 136 and p. 137.)

Near the end of the Senate hearings, Commissioner Eastman summed up the contentions of the parties as to the Adjustment Board problem in these words:

> "The railroads propose a substitute for all of Section 3, which provides for a National Board of Adjustment. Before taking up the points of disagreement, it will be well to consider how far there is an agreement. Apparently, it is agreed by all that the provision in the present act for boards of adjustment has been ineffective: (1)

because the establishment of such boards has not been compulsory, and (2) because there has been no way to prevent deadlocks in those which have been set up. The employees want a National Board of Adjustment, divided into four sections, to be created definitely and certainly; and the railroads, as I understand them, are willing to have 16 regional boards of adjustment set up. Both parties are willing to permit system or other local boards of adjustment to be set up by agreement, so long as the arrangement is otherwise within the terms of the act. Both are willing to have neutral members appointed, and by the Mediation Board if necessary, in order to prevent deadlocks." (Senate Hearings, p. 152 and p. 153.)

The Senate Report (No. 1065) stated that in the past regional boards had not been set up and that both the carriers and the employees had now agreed "that the setting up of boards for the settlement of disputes should be made compulsory, when necessary."

In the House Hearings, the statements of the advocates were quite similar to those already made in the Senate.

Mr. Eastman covered his previous ground as to the two desired changes. Then he stated that the proposed bill "attempts to remedy both of these deficiencies" by providing for the creation of a national board for "grievances" to which they "may" be referred. He pointed out that provision had been made to prevent deadlocks, by providing for a neutral to be appointed by the Mediation Board. (House Hearings, p. 47.)

Mr. Winslow urged that the board be constituted so that "decisions will be made." (House Hearings, p. 72.)

Mr. Harrison gave much the same statement that he had given before the Senate group as to the history of the Adjustment Board's situation, emphasizing the failure of estab-

lishment and deadlocks. He stated labor's position as to Adjustment Board's handling of "grievances" and he emphasized that the Adjustment Board was designed to adjust *grievance* cases.

> "So, out of all of that experience and recognizing the character of the services given to the people of this country by our industry and how essential it is to the welfare of the country, these organizations have come to the conclusion that in respect to the minor-grievance cases that grow out of the interpretation and/or application of the contract already made that they can very well permit those disputes to be decided, if they desire to progress them, to be decided by an adjustment board." (House Hearings, pp. 81-82.)

> "The bill is designed to bring that very thing about. And that is what we hope will come about, because we feel that it is in the interest of our industry and we believe it is in the interest of the people of this country to maintain peace on these railroads and adjust our controversies in an enlightened and intelligent fashion." (House Hearings, p. 83.)

Mr. Clement's statement was similar to that previously given in the Senate, as to the same two defects and the corrective steps. (House Hearings, p. 123, and p. 135.)

The House Report (No. 1944) recited failure to establish and deadlocks. It merely stated that the bill *established* a national board to which "these disputes *may*" be submitted.

III. There Was No Intention To Prohibit Strikes Or To Grant Injunctions

The subject of strikes and injunctions was discussed only on one day in *one* committee hearing—in the House on April 12th, and it is apparent that the sponsors of the bills had not intended even to mention it.

That discussion (House Hearings, pp. 58-64) showed that the only inquiry was over whether a strike could be had over a *grievance* dispute which the employees had submitted through their representative and which had been decided *adversely* to them by the Adjustment Board. Questions from the committee related to an injunction as to *that* situation.

The colloquy began over the effect of "final and binding" awards on a strike, while Mr. Eastman was appearing.

He made it clear that he was referring to grievances only, and *after* such an adverse award.

> "COMMISSIONER EASTMAN. In my answer to you I said there was nothing in the act which provided for the enforcement of those particular decisions. That answer would not apply to decisions of the adjustment board, and they are made final and binding by the terms of this act, and as I understand it, the labor organizations, none of them, are objecting to that provision. *They have their day in court and they have their members on the adjustment board,* and if an agreement cannot be reached between the parties representing both sides on the adjustment board, *a neutral man steps in and renders the decision, and they will be required to accept that decision when made, with respect to these minor matters.* They are not the major issues which arise in the labor world. It has to do with the settlement of these grievances. Page 16 defines the disputes which are to be referred." (Emphasis supplied.) (p. 59.)

All through the discussion it was apparent that the Congressmen were extremely conscious of the right to strike. The question as to injunction came up thus:

> "MR. WOLVERTON. Is there any provision in this bill that would enable the court to obtain an injunction against

a labor organization which is dissatisfied with the final decree and refuses to comply with it?

"COMMISSIONER EASTMAN. Well, I am not able to give you an answer to that. That is a legal question, to be frank with you, that I have not gone into.

"MR. WOLVERTON. It would seem to me that the provisions or language of the bill itself would answer that question. And is it contrary to public policy to have such a provision in there?

"COMMISSIONER EASTMAN. Well, it is my own opinion that there ought not to be strikes with reference to minor grievances of that sort. I should be very unwilling to take away from the employees the right to strike on *major issues, but these are not major issues.*" (Emphasis supplied.)

That indicates no purpose to draft any injunction provision, and no application to a rule change as here.

Mr. Eastman continued, acknowledged that he "was in doubt about it" and "would rather see it carried out without it." (p. 61.)

Mr. Carmalt, his legal advisor, was questioned and limited his opinion to a strike over *grievances* after an award; and admitted that "the question has not arisen therefore before this morning," and that he was "more or less thinking out loud" about it. (p. 62.)

To close the discussion, Mr. Eastman showed the true perspective and defined limits of the discussion in these words:

"COMMISSIONER EASTMAN. I may say, so far as I am concerned, it had not seemed to me that matter was a contingency of importance, because I cannot conceive of organizations striking over the settlement of grievances,

particularly when they had been passed upon by an impartial tribunal under Government auspices.

"It is a serious enough thing to strike when a major matter is involved; but when you have only minor grievances and they have had full apportunity to be heard and have had their day in court before a tribunal, it hardly seemed to me that that was a question that was likely to arise. My own idea would be, *let that question arise out of experience and find out whether there is actual need for any such power before you provide for issuing injunctions for preventing strikes.* (Emphasis Supplied).

'MR. WOLVERTON. Mr. Commissioner, that may be true. Maybe that is a proper course to pursue, but what I am seeking to find out is whether this language declares something else to be the policy.

"COMMISSIONER EASTMAN. Yes.

"MR. WOLVERTON. And, I am endeavoring to find out just what the language of this bill does provide, so that we may know what policy we are adopting. It may be that a hands-off policy is what we should adopt, but in that case, I do not want to see something in the bill that carries a different effect. That is the purpose of my questions, in trying to find out definitely what is the purpose or effect of the provisions in this bill.

"COMMISSIONER EASTMAN. I shall be glad to give the matter study and let you know just what my opinion is upon it." (House Hearings, pp. 63, 64.)

PART TWO

The Donnell Bill Which Was Introduced in 1950.

If from the 1934 legislative history there remains any doubt as to what Mr. Harrison, Commissioner Eastman, or

the representatives of railroad management meant by their statements then the more recent events of the 81st Congress completely clarify that.

As stated in the text of this brief, Senator Donnell's bill introduced—but killed in committee—would have done exactly what petitioner here and now says the 1934 Congress actually did.

His bill, S 3463, provided:

"Sec. 10A. First. Any strike, including any concerted stoppage of work by employees or any concerted slowdown, sit-down, walk-out, or other concerted interruption of operations by employees, or any lock-out by a carrier, arising out of or in connection with any dispute falling within the purview of this Act, shall be unlawful."

Its violations called for criminal sanctions.

Mr. Harrison reappeared on the legislative scene and among other things said this:

"It must be apparent to anyone familiar with labor-management relations that if the carriers ever force the common use of court procedure in the enforcement of awards of the Adjustment Board, the employees will be compelled to return to the use of economic strength in contract violations in the first instance and refrain from handling cases with the Board. The provisions of this bill providing for a court review of the awards of the Board will completely destroy the effectiveness of the Board and place in the hands of the carriers a weapon with which they will be able to delay the settlement of all disputes, involving the interpretation or application of agreements, with the result that many strikes will inevitably follow." (Senate Hearings, p. 177.)

Later he remarked:

"MR. HARRISON. What I mean is this: If the carriers

do not depart from the use of court procedure to determine grievances and to bring about compliance with Adjustment Board decisions, then we are heading for trouble and we cannot use the Adjustment Board machinery that is in the law. In your bill, Senator, you propose that every decision rendered by the Adjustment Board would be subject to review by a court. If the railroad, or the losing party, wanted to take it to court and get a review for either side, we say that is bad, that is unworkable, it creates and invites delay, it invites litigation, it creates an expense that would just be impossible for the employees to live with . . . "

"MR. HARRISON. Now why do I reason it out that way? You see, under the present law, if we have a complaint against a railroad company that one of our contracts has been violated, that we cannot settle after a conference with railway management, we may, at our own election, take that dispute to the Railroad Adjustment Board for decision, or we may strike if we want to under the present law. But we have gone, as the record shows, to the Adjustment Board, went through all the delay and all the hearing and all of the expense to get a decision. Now we get the decision in favor of the applicants, or plaintiffs, the union, and the railroad says, 'Pooh, pooh, we won't put it into effect. If you want to get that out of us, go to court and sue us.' Well we don't want to sue, because we tried the case once, according to the agreed-opinion procedure, so we threatened to strike, against an arbitrary refusal, to put into effect the decision, after they had their day in court, now they want in this bill proposed by you, to have the right to go into court and get a review of every decision that is handed down by the Adjustment Board. Well, where would we ever get anything settled? That is nonsense, you can't handle labor relations like that." (Senate Hearings, p. 205.)

Mr. Loomis, for the railroads, also recognized the right to strike in such cases. (Senate Hearings, p. 86). Likewise did Mr. J. Carter Fort, (p. 13), as shown in the text of our brief.

So did Mr. Miller, also their spokesman, in this language:

"Currently, as I have indicated, most of the disputes, especially with the operating railway labor organizations, grow out of grievances. If the unions are deprived of their right to strike, and compelled to submit their grievances to the National Railroad Adjustment Board, which was established for that purpose, there will certainly be more 'peace on the rails.'" (Senate Hearings, p. 69.)

Other statements are just as devastating to the carrier's contention here.

CENTRAL OF GEORGIA RAILWAY COMPANY
LAW DEPARTMENT

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SUPREME COURT, U. S.

84

SAVANNAH, GA., February 18, 1957

Mr. E. P. Cullinan
Office of the Clerk
United States Supreme Court
Washington, D. C.

Re: Central of Georgia Railway Company, Petitioner
vs.
Brotherhood of R.R. Trainmen, et al., Defendants
Case Number 84, October Term 1956

Dear Sir:

Pursuant to our conversation on Friday, February 15, we consider it incumbent upon ourselves, as counsel for the petitioner in this case, to call the Court's attention to a recent development which may have a substantial bearing on the disposition of this case by this court. However, the development has no bearing on the companion case, No. 313, Brotherhood of Railroad Trainmen, et al., v. Chicago River and Indiana Railroad Company, et al..

The issue raised by the petition for certiorari in our case Number 84 is "whether or not the Norris-LaGuardia Act deprived the United States District Court of jurisdiction to enjoin a strike threatened by the Brotherhood of Railroad Trainmen over a dispute, pending the settlement of that very dispute by the National Railroad Adjustment Board, to which Board the dispute has been properly submitted for decision pursuant to the Railway Labor Act".

On February 12, 1957, the First Division of the National Railroad Adjustment Board in Docket No. 33508, Award No. 18062, in the case of Central of Georgia Railway Company v. Brotherhood of Railroad Trainmen, rendered a decision, a copy of which is hereto attached.

The aforesaid National Railroad Adjustment Board Award was rendered in the labor dispute involved in case No. 84, Central of Georgia Railway Company v. Brotherhood of Railroad Trainmen, et al., which is set down for argument before the Supreme Court on February 25, 1957.

At the time this dispute arose, both the Yardmen and the Roadmen were represented by the Brotherhood of Railroad Trainmen and the dispute involved both "Yardmen" and "Roadmen". (R. 36) As stated in said Adjustment Board Award, on May 25, 1956, the National Mediation Board, in its case R-3033 (the Award shows R-2033) pursuant to Section 2 Ninth of the Railway Labor Act, certified that the Switchmen's Union of North America (AFofL - CIO) was the duly designated representative for the "Yardmen" on the Central of Georgia Railway. Then on December 1, 1956, the Switchmen's Union of North America and the Central of Georgia Railway Company negotiated a contract which in effect settled the dispute involved in this case insofar as it applied to the "Yardmen".

This settlement left outstanding the dispute insofar as it affected "trainmen employed on switch local assignments and/or local freight assignments", referred to generally as "Roadmen", (R. 36), still represented by the Brotherhood of Railroad Trainmen.

It would appear that the National Railroad Adjustment Board in the Award has held that the Cheney Award applied only to "Yardmen".

It may well appear to the Court that our case No. 84 has now been rendered moot since the main purpose of the injunctive relief sought was to stay the threatened strike pending the decision by the Adjustment Board (R. 14,16). The Adjustment Board has now taken jurisdiction and has acted.

The Central of Georgia Railway Company does not know whether the United States Supreme Court under these circumstances would wish to hear argument in Case No. 84, and, if appropriate, Central would be perfectly willing to agree with opposing counsel to waive argument on its case and abide by the decision of the Court in the companion case No. 313, Brotherhood of Railroad Trainmen, et al., v. Chicago River and Indiana Railroad Company, et al.

It is the position of the Central of Georgia Railway Company that the aforesaid award of the National Railroad Adjustment Board sustains Central's position that the National Railroad Adjustment Board had jurisdiction of the dispute. The Adjustment Board took jurisdiction of the cause, considered the case, and

determined that the dispute had become moot in view of the representation of the "Yardmen" by Switchmen's Union of North America and the resultant contract settlement.

However, despite the foregoing development, unless the Central is advised to the contrary, it will be prepared to argue the question as presented in its petition for certiorari in case No. 84.

Sincerely yours,

John B. Miller
Petitioner's Attorney

JBM:bm

cc: Hon. Benning M. Grice
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Chicago River & Indiana R.R. Co.
LaSalle Street Station
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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
First Division

AWARD 18 062

DOCKET 33 508

PARTIES TO DISPUTE: Central of Georgia Railway Company
Brotherhood of Railroad Trainmen

STATEMENT OF CLAIM: "It is the claim of the Central of Georgia Railway Company that Referee George Cheney's Award (Exhibit "A") released at Washington, D. C., August 1, 1951 was a final and binding disposition of the controversy which has existed for many years over the propriety of the performance of the air hose coupling function by yardmen represented by the Brotherhood of Railroad Trainmen, and that the award is not subject to change, cancellation, revision or modification at the demand of the Brotherhood."

FINDINGS: The First Division of the National Railroad Adjustment Board, upon the whole record and all the evidence, finds that the parties herein are carrier and employe within the meaning of the Railway Labor Act, as amended, and that this Division has jurisdiction.

Hearing was held.

The parties to this dispute were parties to a National Agreement dated May 25, 1951, whereby it was agreed that a dispute between them concerning "Coupling and Uncoupling Air, Signal and Steam Hose" should be "submitted to a referee to be appointed by the President of the United States for decision" and that "the decision of the referee shall be final and binding on the parties."

Conformably to the provisions of that agreement, George Cheney was appointed referee and rendered his decision August 1, 1951.

The referee prescribed a rule to become a part of the collective bargaining agreements between railroads, parties to the agreement of May 25, 1951, and their employes, represented by the Brotherhood of Railroad Trainmen, having application to yardmen, subject, however, to the proviso, that "individual carriers (might) elect to accept this rule or retain their present rules and practices" by notifying the General Chairman prior to September 1, 1951, the date upon which the referee's decision became effective.

This carrier elected to retain its, then, practices and duly notified the General Chairman to that effect.

By another agreement of May 25, 1951, to which this petitioner and respondent were parties, a moratorium was set up to expire October 1, 1953. By its terms, neither the railroads nor their employes, represented by the Brotherhood, would propose or undertake to progress, any changes in rates of pay, rules or working conditions, subject to certain conditions or exceptions, not pertinent here.

On November 25, 1953, the Brotherhood served notice on petitioner, Central of Georgia Railway, of its desire to negotiate an "Amendment to Article 41, Coupling and Uncoupling of Air and/or Steam Hose, etc.", having application to yardmen. It is said that lengthy discussions followed, the carrier persevering in its contention that the controversy had been disposed of by arbitration; that "the neutral referee's decision and award specified that the decision and award was final and binding on the parties, and . . . declined to grant the request for a rule."

It is unnecessary to review proceedings that intervened between the close of conferences and mediation and the submission of the case to this Board by the carrier, on January 17, 1955, for decision of the claim as above set out.

On May 25, 1956, the National Mediation Board, in its case R-3033, pursuant to Section 2, Ninth, of the Railway Labor Act, amended, issued its -

"CERTIFICATION

"Therefore, the National Mediation Board certifies that the Switchmen's Union of North America, AFL-CIO, has been duly designated and authorized to represent, for the purposes of the Railway Labor Act, the craft or class of Yardmen (Foremen, Switchmen), employees of the Central of Georgia Railway Company, its successors and assigns."

A copy of said certification is on file with this Division.

There is now on file with this Division copy of an agreement between the Central of Georgia Railway Company and Switchmen's Union of North America, covering Yardmen (Foremen, Switchmen) in the employ of the Central of Georgia Railway Company, effective December 1, 1956, which contains, among other provisions, Article 11, "Coupling or Uncoupling Air, Steam, Signal Hose", providing for the payment for such services, when performed by yardmen, under conditions set forth, of ninety-five cents per day, in addition to other earnings.

It is apparent, therefore, that the issue presented in the above statement of claim, as presented to this Division by the carrier, has become moot, and no longer exists. Therefore, this case is dismissed.

AWARD: Case dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

ATTEST: /s/ J. M. Mondon
EXECUTIVE SECRETARY

DATED AT CHICAGO, ILLINOIS,
THIS 12TH DAY OF FEBRUARY 1957.

CENTRAL OF GEORGIA RAILWAY COMPANY
LAW DEPARTMENT

P. O. BOX 942

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SAVANNAH, GA. February 20, 1957

Mr. E. P. Cullinan
Office of the Clerk
United States Supreme Court
Washington, D. C.

Re: Central of Georgia Railway Company, Petitioner
vs.
Brotherhood of R.R. Trainmen, et al., Respondents

Dear Sir:

Please refer to our letter to you of February 18, 1957, and Mr. Grice's letter to you of February 19, 1957, concerning the disposition of Case No. 84, set for argument Monday, February 25, 1957.

As counsel for the petitioner, Central of Georgia Railway Company, we join in respondents' request that the Petition for Certiorari in Case No. 84 be dismissed on the ground that the issue presented in the Petition for Certiorari has become moot; the National Railroad Adjustment Board having rendered its decision in the dispute involved in this case.

Petitioner prays that the mandate of the United States Supreme Court issue pursuant to the judgment of dismissal for mootness directing a vacation of the judgment of the Court of Appeals for the Fifth Circuit in this case* and that costs be taxed equally between the parties.

* See United States v. Munsingwear, 340 U. S. 36

Sincerely yours,

John B. Miller

John B. Miller
Petitioner's Attorney

JBM:bm

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February 19, 1957

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OFFICE OF THE CLERK
SUPREME COURT, U. S.

Mr. E. P. Cullinan
Office of the Clerk
United States Supreme Court
Washington 13, D. C.

Re: Central of Georgia Railway Company, Petitioner
vs.
Brotherhood of R. R. Trainmen, et al., Defendants
Case Number 84, October Term 1956

Dear Sir:

The Respondents in the above stated case request the Court to dismiss the proceedings upon certiorari pending here upon the ground that the case has become moot because of the following:

Petitioner's complaint was for injunction against a strike, seeking protection of its pending submission to the National Railroad Adjustment Board of what it considered to be the controlling issue in the case. This Court granted certiorari from the Court of Appeals' reversal of the District Court's issuance of such injunction and overuling of the motion to dismiss the complaint.

However, the National Railroad Adjustment Board, on February 12, 1957, dismissed such submission.

Thus, since Petitioner's submission is no longer pending before said Board no ground whatever exists for the injunction sought because there is no basis to contend that the Railway Labor Act is thereby being violated so as to authorize the injunction in the face of the prohibitions of the Norris-LaGuardia Act.

A copy of letter dated February 18, 1957, from Petitioner's Counsel to Mr. E. P. Cullinan has been received. Due to the dismissal of such submission and also due to the fundamental difference as pointed out in Respondent's brief between the instant case (No. 84) and No. 313, Brotherhood of Railroad Trainmen, et al., v. Chicago River and Indiana Railroad Company, et al., no agreement can be entered into to abide by the decision in No. 313. From the facts now before the Court the case of Central of Georgia Railway Company vs. Brotherhood of Railroad Trainmen, Local Lodge No. 721, et al. (No. 84), has become moot and Respondents respectfully request that certiorari proceedings be dismissed.

This matter is being brought to the attention of the court in this manner rather than by motion due to the time element, the case being set for argument this coming Monday, February 25, 1957. The writer may be reached, if necessary, at the Hotel Washington, Washington, D. C. from his arrival there this Saturday, February 23rd, at approximately 9:30 A.M. until convening of court on Monday.

Very truly yours,

Benning M. Grice

Benning M. Grice
Respondent's Attorney

BMG:pn

cc: Mr. John B. Miller
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